

## AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO SUE

This Agreement and General Release (“**Agreement**”) is made and entered by and between the Town of Tusayan, a municipal corporation of the State of Arizona (hereinafter referred to as the “**Town**”) and Enrique Medina Ochoa (hereinafter referred to as “**Ochoa**”);

WHEREAS, the parties have agreed that it is in their mutual best interest for Ochoa to resign his position with the Town of Tusayan; and

WHEREAS, the parties mutually wish to resolve all rights, demands, actions, obligations, liabilities and causes of action of any and every kind, nature and character whatsoever, known or unknown, which each may now have, have in the future or have ever had against each other;

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings as more particularly set forth below, the parties do hereby agree as follows:

1. Effective May 15, 2012, Ochoa resigned from his position as Town Manager. Ochoa agrees and recognizes that his duties with the Town ceased upon his leave of absence effective April 30, 2012.

2. The Town shall pay to Ochoa a lump sum payment of Seventy-Three Thousand Four Hundred Fifty-One Dollars and Forty-Six Cents (\$73,451.46) from which all state and federal withholdings shall be deducted. The Town shall deliver the check to Ochoa at ~~7745 W. Shangri La Road, Peoria, Arizona 85345~~ Road, Peoria, Arizona 85345 following the expiration of the revocation period described in Section 14.

3. The Town shall pay to Ochoa Two Thousand Forty-Four Dollars and Seventy-Six Cents (\$2,044.76) in reimbursement for expenses incurred as Town Manager. The Town shall deliver the check to Ochoa at 7745 W. Shangri La Road, Peoria, Arizona 85345 following the expiration of the revocation period described in Section 14.

4. The Town shall pay Six Thousand One Hundred Seventy-Nine Dollars and Sixty-Two Cents (\$6,189.62) as the employer's contribution to Ochoa's Arizona State Retirement payment for the period October 1, 2011 through May 15, 2012. The Town shall agendize and take action concerning authorization to participate in the Arizona State Retirement System no later than August 15, 2012. If Ochoa has not submitted the necessary documentation to participate in the Arizona State Retirement System and has not made the required employee contribution for participation in the Arizona State Retirement System on or before June 1, 2013, the Town's obligations pursuant to this Section 3 shall terminate.

5. In consideration of the foregoing, Ochoa hereby completely releases, acquits and forever discharges the Town and its representatives, heirs, successors, assigns, affiliated entities, elected officials, councilmembers, officers, directors, agents, employees and attorneys (collectively, the "Released Parties") from all claims including all rights, demands, actions, obligations, liabilities and causes of action of any and every kind, nature and character whatsoever, known or unknown, which Ochoa may now have or has ever had against the Town or other Released Parties, including without limitation (i) all claims arising from or in any way connected with the employment of Ochoa by the Town or the cessation thereof occurring prior to or after the execution of this Agreement; (ii) all claims which Ochoa may have filed in any court of law or before any municipal, state or federal agency arising from or in any way connected with the employment of Ochoa by the Town or the cessation thereof; (iii) all claims pertaining to Ochoa's job performance while employed by the Town; and (iv) all claims for costs and attorneys' fees, except claims or proceedings necessary to enforce the provisions of this Agreement.

By way of example, only and without limiting the immediately preceding paragraph, this Agreement is applicable to any existing or future cause of action, right, claim or liability under any of the following, as amended: Age Discrimination in Employment Act, Title VII of the 1964 Civil Rights Act, the 1866 Civil Rights Act, 42 U.S.C. Sections 1981, 1983, et seq., the Equal Pay Act of 1963, the Arizona Civil Rights Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Arizona Employment Protection Act; and any other equal employment opportunity law or statute, or of wrongful discharge, implied or express contract, the covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, defamation, and any other claim in contract or tort. Ochoa is advised to consult an attorney regarding this Agreement.

The Town hereby completely releases, acquits and forever discharges Ochoa from all claims including all rights, demands, actions, obligations, liabilities and causes of action of any and every kind, nature and character whatsoever, known or unknown, which the Town may now have or has ever had against Ochoa.

6. The Town acknowledges that Ochoa has returned all of its documents, reports, files, memoranda, records, doors and file keys, electronic equipment such as cellular telephone, iPad and keyboard, computers, computer access codes, disks and instructional manuals.

7. Ochoa acknowledges and agrees that he has received payment in full by the Town for all wages, overtime, bonuses, reimbursements or other forms of compensation to which he was entitled as a result of his employment with the Town.

8. Without limiting the generality of the foregoing, it is understood and agreed that this Agreement constitutes a full and final release by the parties hereto covering all known, unknown, anticipated and unanticipated injuries, debts, claims or damages to all the parties which have arisen, or may have arisen, in connection with Ochoa's employment with the Town, as well as those

injuries, debts, claims or damages not known or disclosed which have arisen, or may have arisen, from said employment relationship.

9. The parties hereto waive any rights or benefits which each may now have or may have in the future, arising out of the employment relationship between Ochoa and the Town and including any claims which each party does not know or expect to exist at the time of its execution of this Agreement except as specified in this Agreement. The parties hereto further waive any and all rights, claims, causes of action or benefits which each party does not know or suspect to exist at the time of execution of this Agreement which, if known, would have materially affected this settlement herein. The parties agree that this is a complete and final settlement and specifically affirm their intention to release not only those claims against one another which they know about, but also those claims now existing which they do not know about.

10. Ochoa agrees to keep confidential all information and documents obtained by Ochoa during the course of his employment with the Town in connection with his service as Town Manager. Notwithstanding the preceding sentence, Ochoa may inform prospective employers about his duties, responsibilities and accomplishments during his term as Town Manager.

11. The Town agrees that in the event any inquiry (other than pursuant to a court order or disclosure required by law) is received from a prospective employer or any other person or entity as to Ochoa's employment with the Town, pursuant to the Town's normal policy, all such inquiries will be directed to the office of the Town Manager. The only information that will be provided by the Town Manager is the dates of employment, current or last position title and salary information. The Town further agrees that the Town Manager will provide no further information to any prospective employer or any other person or entity as to the facts and circumstances of Ochoa's employment, even if Ochoa is required to execute any release or waiver by a prospective employer

or other person or entity authorizing the Town to provide information to that person or entity concerning his employment record.

12. If either party receives a subpoena, court order, or other request for information relating to Ochoa's employment (in the case of the Town) or relating to the Town (in the case of Ochoa), whether formal or informal, the receiving party shall promptly notify the other party.

13. The parties hereto irrevocably agree that neither Ochoa nor the Town will release or utter derogatory information about the other as it relates to Ochoa's employment with or resignation from the Town, and that the only appropriate public or private comment by either will be to the effect that Ochoa resigned from Town employment on a mutually acceptable and amicable basis.

14. Ochoa acknowledges that he has fully discussed all aspects of this Agreement with his attorney to the extent he wishes to do so. Ochoa 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. Ochoa 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. Ochoa 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 Ochoa wishes to revoke the Agreement, he must do so by delivering written notification of the revocation before the expiration of the revocation period to the Town Attorney (William J. Sims) at [wjsims@simsmurray.com](mailto:wjsims@simsmurray.com) . In the event this Agreement is signed prior to the expiration of 21 days, Ochoa acknowledges that he has voluntarily and knowingly agreed to waive his entitlement to take 21 days to consider this Agreement.

15. This Agreement will be effective after the expiration of the seven-day revocation period outlined in Section 14 above.

16. Ochoa warrants that he does not have any claim or charge pending against the Town or any other Released Party with any court, tribunal, administrative agency, governmental agency, or other such body.

17. Ochoa 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, Ochoa agrees that he will not induce, aid, or abet anyone in instituting or prosecuting any pending or future claim against the Town or any other Released Party in any court, arbitral tribunal, or administrative agency.

18. Ochoa acknowledges that he understands all of the provisions of this Agreement which are contractual in nature, its contents and legal effects. The preceding paragraphs recite the sole consideration for this Agreement. All agreements and understandings between the parties are embodied and expressed herein. Each party has entered into this Agreement freely, without coercion, and based on its own judgment and not in reliance upon any representations made by each to the other, other than those contained herein. This Agreement and all provisions hereof, including all representations and promises contained herein, are contractual and not a mere recital and shall continue in permanent force and effect. This Agreement constitutes the sole and entire agreement of the parties in respect to the subject matter hereof, and there are no agreements of any nature whatsoever between the parties hereto except as expressly stated herein. Furthermore, no supplement, modification or amendment of this Agreement shall be valid or binding unless in writing and signed by the parties to this Agreement.

19. 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.

20. Ochoa specifically agrees that this Agreement may be pled by the Town or any of the other Released Parties as an absolute bar to any released claim.

21. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The courts within the State of Arizona shall have exclusive jurisdiction over any litigation brought to declare, determine or enforce any right or obligation arising either directly or indirectly out of the terms of this Agreement, and all parties hereby consent to the personal jurisdiction of the court within the State of Arizona.

22. Should any part, term or provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid parts, terms or provisions shall be deemed not to be a part of this Agreement, except that if any of the releases by Ochoa herein are deemed invalid, the Town shall have the right to seek rescission of the Agreement.

23. The parties expressly agree to execute any and all further additional instruments as reasonably may be required, or to perform any other act necessary to effectuate and carry out the purposes of this Agreement.

24. In the event that any party to this Agreement breaches this Agreement in any manner, the parties agree that the remedy of law for any breach of the provision of this Agreement will be inadequate and that, in addition to any remedy at law, the parties shall be entitled to seek appropriate injunctive relief in case of such breach. A partial, nonmaterial breach of this


Agreement shall not operate to render the entire Agreement unenforceable and, in the event of such breach, all of the other provisions shall remain fully operable.

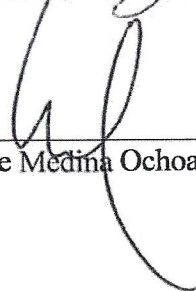
25. The parties expressly agree that if there is any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and reasonable attorneys' fees incurred with respect to such litigation.

PLEASE READ CAREFULLY. THIS AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the parties have set their hands as of the dates set forth below.

TOWN OF TUSAYAN:

  
\_\_\_\_\_, 6/10/12  
By: Greg Bryan, Mayor date

  
\_\_\_\_\_, 6/12/12  
Enrique Medina Ochoa date