

EXHIBIT "D"

SEVERANCE AGREEMENT

This Severance Agreement (this "Agreement") is made between the City of Baytown, Texas, referred to in this Agreement as the "City" and Kaythie Darnell, referred to in this Agreement as "Departing Employee."

I.

Purpose of Agreement

The City is a home-rule municipal corporation located in Harris and Chambers Counties, Texas. The City and Departing Employee agree that Departing Employee has been employed by the City on an at-will basis as the City Clerk. Departing Employee has agreed to voluntarily resign effective July 7, 2009. The purpose of this Agreement is to (1) permit Departing Employee to resign voluntarily; (2) obtain a release of any and all claims that Departing Employee has or may have against the City; (3) provide Departing Employee with a payment in return for such release of any claims against the City relating to the employment relationship; and (4) determine any rights or restrictions that will affect the future conduct of either Departing Employee or the City.

II.

Resignation

By this Agreement, Departing Employee resigns from her position as the City Clerk effective July 7, 2009.

III.

Departing Employee's Promises, Representations, and Obligations

- 3.01 Departing Employee acknowledges that her employment with the City is at-will. Departing Employee agrees that she has resigned her position pursuant to Article II and agrees that (i) she is not entitled and shall not seek or file any claim for unemployment benefits and (ii) she is not entitled and shall not seek or file any appeal or grievance with regard to any aspect of her employment and/or termination under the City's policies and procedures.
- 3.02 During the course of the employment relationship between the City and Departing Employee, Departing Employee has had access to a variety of confidential information. This information was disclosed to Departing Employee solely because of her employment with the City, and is not generally known to the general public. Departing Employee agrees and warrants that she will immediately return to the City all copies of confidential information or related materials in her possession, whether in electronic or hardcopy format. Departing Employee agrees and warrants that she will not disclose any confidential information to third parties or use that information for her benefit in derogation of the City's rights.

- 3.03 Departing Employee agrees not to discuss the terms of this Agreement with third parties and further agrees not to make any comments or representations in the future concerning the City, its business, or its relationship with Departing Employee that may disparage or otherwise damage the City's reputation, good will, or other interests.
- 3.04 **By this Agreement, Departing Employee releases and waives any and all claims that may arise against the City and/or its officers (whether elected or appointed), agents and employees, as a result of the former employment relationship, except for any claims that might arise from this Agreement. Without limitation, Departing Employee waives and releases any and all claims or liabilities, known or unknown, suspected or unsuspected, which arise out of:**
1. **Any breach of contract or promissory estoppel claims.**
 2. **Any tort claims that might arise in connection with the employment relationship or its termination, including claims for wrongful discharge/termination, retaliatory or discriminatory discharge, or intentional infliction of emotional distress.**
 3. **Any claims arising under relevant state or federal labor or civil rights statutes, including, but not limited to, claims under United States Constitution, the Texas State Constitution, the Age Discrimination in Employment Act, the Americans with Disabilities Act, Title VII, the Texas Commission on Human Rights Act, the Texas Whistleblower Act, the Texas Payday Law, the Fair Labor Standards Act, the Equal Pay Act, the Family and Medical Leave Act, the Texas Open Meetings Act, the Texas Public Information Act, and Texas Worker's Compensation Act.**
- 3.05 Departing Employee agrees that she will never institute any legal action against the City except for any action necessary to enforce the terms of this Agreement, and that she will not seek damages or equitable relief relating to any matter arising from the former employment relationship or the termination of employment.
- 3.06 Departing Employee represents that she is fully competent to enter into this Agreement, has not transferred, assigned, pledged or otherwise encumbered any of her rights in the claims released or waived under this Agreement, and will not transfer or assign or attempt to transfer or assign those rights in the future. Employee understands and agrees that her interests are being completely released and discharged by this Agreement.
- 3.07 Departing Employee will indemnify and hold the City harmless from any loss, expense, or damage, including attorney's fees, incurred by the City as a result of any breach of this Agreement.
- 3.08 Departing Employee agrees to voluntarily make herself available to the City and its attorneys, on the written request of the City, without the necessity of subpoena, in the

event any litigation arises out of acts or omissions committed by Departing Employee during the course of her employment.

- 3.09 Departing Employee acknowledges that the obligation of the City to provide the consideration stated in Section 4.01 of this Agreement arises solely from the terms of this Agreement, and not from any other promise or obligation. Specifically, consistent with the Older Workers Benefit Protection Act, the provisions of this Agreement contain consideration other than regular compensation to which Departing Employee would already be entitled.
- 3.10 Departing Employee acknowledges that, pursuant to applicable law, she has been offered the opportunity to review this Agreement for up to 21 days. Departing Employee acknowledges that she has been advised in writing by the City to seek legal counsel concerning the terms and conditions of this Agreement, including the releases set forth herein and has had full opportunity to do so. Departing Employee represents that she has not been influenced to any extent whatsoever or induced to enter this Agreement in reliance upon any statement, promise or representation of the City or any of the other parties hereby released. Departing Employee further acknowledges and represents that she fully understands the content and legal significance of this Agreement and that by her signature below, she acknowledges that she has read this agreement, and that she fully understands the same, and that she has executed the Agreement of her own free will and accord. The parties agree that Departing Employee shall have seven calendar days following the date on which she signs this Agreement to revoke her acceptance of this Agreement. This Agreement shall not become effective until the revocation period has expired.

IV.

City's Promises and Obligations

- 4.01 In addition to the sums specified in Section 4.02 and as consideration for the resignation, release and promises and agreements of Departing Employee contained in this Agreement, the City agrees to pay Departing Employee the sum equal to four months regular pay at the Departing Employee's current pay rate within 30 working days of the effective date of this Agreement. Any tax adjustments and withholdings required by law to be made by the City will be made. Departing Employee shall be responsible for any and all federal, state and local tax consequences that result from her receipt of the settlement funds paid in accordance with this Agreement.

Departing Employee has the right to elect continued coverage under the City of Baytown's medical plan at her own cost and expense for a period of eighteen (18) months from the date of resignation pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Departing Employee hereby elects such continued coverage and the City agrees that it shall pay Departing Employee's premium for such coverage the first four (4) months only. Thereafter, the Departing Employee shall be responsible for all costs and expenses thereof for any remaining period. It is

expressly understood and agreed that the COBRA payments provided by the City in this paragraph will cease if and when the Departing Employee becomes covered by any other group health insurance plan(s) or in any way becomes ineligible for COBRA continuation benefits. To this end, Departing Employee agrees that she will have the responsibility and the obligation to report in writing to the City's Director of Human Resources within ten days of becoming covered by another group health insurance plan(s) that continued COBRA coverage is no longer necessary. Furthermore, it is expressly understood and agreed that it is the Departing Employee's responsibility to pay any COBRA continuation premiums following exhaustion of this four-month period without further notification from the City should she be eligible for and desire COBRA continuation benefits thereafter. Departing Employee shall be responsible for any and all federal, state and local tax consequences that result from her receipt of this benefit from the City.

- 4.02 The City agrees that within 30 working days of the effective date of this Agreement, it will deliver a final wage check due to Departing Employee. That check will include payments for any accrued vacation pay or other sums due to the Departing Employee in addition to regular wages. The City also agrees to honor all properly substantiated requests for reimbursement of business expenses incurred before July 7, 2009, provided that an expense report is submitted by July 17, 2009.
- 4.03 The City agrees that Departing Employee's separation from the City is to be treated as a resignation while in good standing, and not a termination. In the event that the City is contacted by a potential future employer of Departing Employee, the City will refer to the separation as a resignation in good standing, and will make no disclosure of this Agreement, except as provided for in Section 5.01.

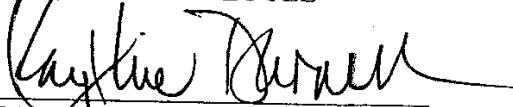
V. General Provisions

- 5.01 The parties agree that this Agreement and all its terms shall be treated by the parties as confidential. Neither Departing Employee nor any official, officer, employee or agent of the City shall disclose any of the terms or conditions of this Agreement to any other party except as provided by in this section. The confidentiality provisions of this paragraph shall not prevent disclosure by the Departing Employee to her spouse or children the terms of this Agreement or reasons for her resignation, nor shall this confidentiality provision prohibit disclosure by the City of the terms and conditions of this Agreement to an auditor or to any other persons as may be required by law.
- 5.02 Execution of this Agreement shall not constitute an admission by either party of any liability of any kind. This Agreement shall not in any way be construed as an admission by either party that it has acted wrongfully with respect to the other party or to any other person or entity.

- 5.03 Each party to this Agreement shall bear his or its own costs, expenses and attorney's fees incurred in, arising out of, or in any way related to the matters resolved by this Agreement or the negotiation of this Agreement.
- 5.04 This Agreement represents the entire understanding and agreement of the parties. It supersedes any other written or oral agreements.
- 5.05 If any provision or a portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed severable and shall remain in full force and effect. This Agreement shall survive the termination of any arrangements contained herein.
- 5.06 This Agreement is to be construed in accordance with the laws of Texas.

Signed this 27th day of July, 2009.

DEPARTING EMPLOYEE



KAYTHE DARNELL

Signed this 27th day of July, 2009.

CITY



GARRISON C. BRUMBACK, City Manager