

INTEVAC INC

FORM 8-K (Current report filing)

Filed 12/26/12 for the Period Ending 12/19/12

Address	3560 BASSETT STREET SANTA CLARA, CA, 95054
Telephone	4089869888
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Industry	Industrial Machinery & Equipment
Sector	Industrials
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of The
Securities Exchange Act of 1934**

December 19, 2012
Date of Report (date of earliest event reported)

INTEVAC, INC.

(Exact name of Registrant as specified in its charter)

Delaware
**(State or other jurisdiction of
incorporation or organization)**

0-26946
**(Commission
File Number)**

94-3125814
**(I.R.S. Employer
Identification Number)**

3560 Bassett Street
Santa Clara, CA 95054
(Address of principal executive offices)

(408) 986-9888
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On December 19, 2012, the Company's Board of Directors approved the Company entering into a severance agreement pursuant to the attached forms (each an "Agreement") with the executive officers of the Company. Each individual who will enter into an Agreement with the Company is referred to herein as an "Executive". The following summary is qualified in its entirety by reference to the full text of the Agreement. Copies of the forms of Agreement are attached to this Current Report on Form 8-K as Exhibit 10.1 and Exhibit 10.2.

Term. Each Agreement has a term of two (2) years (the "Term"), subject to earlier termination as provided in the Agreement. Following the Term, the Executive's employment with the Company will continue to remain at-will and may be terminated by the Company at any time with or without cause or with or without notice. The expiration of the Term will not in and of itself entitle the Executive to receive any severance, and if the Executive's employment with the Company terminates for any reason following the completion of the Term, the Executive will not be entitled to receive any severance pursuant to the terms of the Agreement. If, prior to the expiration of the two (2) year Term, there is an initial occurrence of an act or omission by the Company that could constitute "Good Reason" for termination, and the expiration date of any Company cure period related to such act or omission could occur following the expiration of the two (2) year Term, the Term automatically will extend through the date that is thirty (30) days following the expiration of such cure period. If an Executive becomes entitled to severance benefits pursuant to his Agreement, the Agreement will not terminate until all obligations of the Company under the Agreement have been satisfied.

Severance Benefits. If the Company terminates an Executive's employment for a reason other than Cause (as such term is defined in the Agreement) or Executive's death or disability or if the Executive resigns for Good Reason (as such term is defined in the Agreement), and in each case, such termination occurs during the Term, the Executive will receive as severance from the Company: (i) continuing payments of the Executive's base salary in effect on the date of the Executive's termination, payable in accordance with the Company's standard payroll procedures for twelve (12) months from the date of such termination, plus (ii) continuing payments of \$2,000 per month, payable in accordance with the Company's standard payroll procedures for twelve (12) months from the date of such termination. The payments of clause (ii) of the prior sentence are intended to defray costs to the Executive associated with continued health care coverage for the Executive and the Executive's eligible dependents; however, the Executive may use such funds in any manner the Executive sees fit. The receipt of severance under the Agreement is contingent upon: (i) the Executive signing and not revoking a release of claims in favor of the Company, and (ii) the Executive's continued compliance with the terms of his confidentiality agreement entered into with the Company.

Excise Tax. In the event that the severance payments and other benefits payable to an Executive constitute "parachute payments" under Section 280G of the U.S. tax code and would be subject to the applicable excise tax, then the Executive's severance benefits will be either (i) delivered in full or (ii) delivered to such lesser extent which would result in no portion of such benefits being subject to the excise tax, whichever results in the receipt by the Executive on an after-tax basis of the greatest amount of benefits.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

10.1. Form of Severance Agreement (CFO)

10.2. Form of Severance Agreement (Non-CFO)

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

INTEVAC, INC.

Date: December 21, 2012

By: /s/ JEFFREY A NDRESON

Jeffrey Andreson
Vice President, Finance and Administration,
Chief Financial Officer, Treasurer and Secretary

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EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Form of Severance Agreement (CFO)
10.2	Form of Severance Agreement (Non-CFO)

INTEVAC, INC.
SEVERANCE AGREEMENT

This Severance Agreement (the “**Agreement**”) is entered into as of [DATE], (the “**Effective Date**”) by and between Intevac, Inc. (the “**Company**”), and [NAME] (“**Executive**”).

RECITALS

1. The Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Executive.
2. The Board believes that it is in the best interests of the Company and its stockholders to provide Executive with an incentive to continue his employment and to motivate Executive to maximize the value of the Company for the benefit of its stockholders.
3. The Board believes that it is imperative to provide Executive with certain severance benefits upon Executive’s termination of employment under certain circumstances. These benefits will provide Executive with enhanced financial security, incentive and encouragement to remain with the Company.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Term of Agreement. This Agreement will have a term of two (2) years, commencing on the Effective Date (the “**Term**”), subject to earlier termination as provided in this Agreement. Following the expiration of the Term, Executive’s employment with the Company will continue to remain “at-will” and may be terminated by the Company at any time with or without cause or with or without notice. For purposes of clarification, the expiration of the Term will not in and of itself entitle Executive to receive any severance and if Executive’s employment with the Company terminates for any reason following the completion of the Term, Executive will not be entitled to receive any severance benefits pursuant to Section 3(a) of this Agreement. Notwithstanding the foregoing, if prior to the expiration of the two (2)-year Term, an initial occurrence of an act or omission by the Company constituting the grounds for “Good Reason” in accordance with Section 6(b) hereof has occurred (the “**Initial Grounds**”), and the expiration date of the Company cure period (as such term is used in Section 6(b)) with respect to such Initial Grounds could occur following the expiration of the two (2)-year Term, the Term automatically will extend through the date that is thirty (30) days following the expiration of such cure period, but such extension of the Term shall only apply with respect to the Initial Grounds. If Executive becomes entitled to benefits under Section 3(a) during the Term, this Agreement will not terminate until all of the obligations under the Agreement have been satisfied.

2. At-Will Employment. Subject to the terms hereof, Executive’s employment with the Company remains “at-will” employment and may be terminated by the Company at any time with or

without cause or with or without notice. However, as described in this Agreement, Executive may be entitled to severance benefits depending upon the circumstances of Executive's termination of employment.

3. Severance Benefits.

(a) Termination without Cause or Other than Death or Disability or Resignation for Good Reason. If (x) the Company terminates Executive's employment with the Company for a reason other than Cause or Executive's death or disability or (y) if Executive resigns from such employment for Good Reason, and in each case, such termination occurs during the Term, then subject to Section 4 of this Agreement (including, but not limited to, the release requirements of Section 4(a)), Executive will receive as severance from the Company: (i) continuing payments of Executive's base salary as in effect on the date of Executive's termination, payable in accordance with the Company's standard payroll procedures for twelve (12) months from the date of such termination, plus (ii) continuing payments of \$2,000 per month, payable in accordance with the Company's standard payroll procedures for twelve (12) months from the date of such termination. The payments of clause (ii) of the prior sentence are intended to defray costs to Executive associated with continued health care coverage for Executive and Executive's eligible dependents; however, Executive may use such funds in any manner Executive sees fit.

(b) Voluntary Resignation; Termination for Cause. If Executive's employment with the Company terminates (i) voluntarily by Executive (other than for Good Reason during the Term), (ii) for Cause by the Company, or (iii) for any reason following the expiration of the Term, then Executive will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company's then-existing severance and benefits plans and practices or pursuant to other written agreements with the Company.

(c) Disability; Death. If the Company terminates Executive's employment as a result of Executive's disability, or Executive's employment terminates due to his death, then Executive will not be entitled to receive any other severance or other benefits except for those (if any) as may then be established under the Company's then-existing written severance and benefits plans and practices or pursuant to other written agreements with the Company.

(d) Exclusive Remedy. In the event of a termination of Executive's employment as set forth in Section 3 of this Agreement, the provisions of Section 3 are intended to be and are exclusive and in lieu of and supersede any other rights or remedies to which Executive or the Company otherwise may be entitled, whether at law, tort or contract or in equity, or under this Agreement (other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses). Executive will be entitled to no benefits, compensation or other payments or rights upon a termination of employment other than those benefits expressly set forth in Section 3 of this Agreement.

4. Conditions to Receipt of Severance; No Duty to Mitigate.

(a) Separation Agreement and Release of Claims. The payment of any severance set forth in Section 3(a) above is contingent upon Executive signing and not revoking a release of claims agreement with the Company (which may include an agreement not to disparage the Company, non-solicit

provisions and other standard terms and conditions) in a form reasonably acceptable to the Company (the “**Release**”) upon Executive’s termination of employment and such Release becoming effective no later than sixty (60) days following Executive’s employment termination date (such deadline, the “**Release Deadline**”). In no event will severance payments be paid or provided until the Release actually becomes effective. If the Release does not become effective by the Release Deadline, Executive will forfeit any rights to severance under this Agreement. Any severance payments under this Agreement will not commence until the 60th day following Executive’s separation from service, or, if later, such time as required by Section 4(b)(ii) below. Except as required by Section 4(b)(ii) below, any installment payments that would have been made to Executive during the sixty (60) day period immediately following Executive’s separation from service but for the preceding sentence will be paid to Executive on the 60th day following his separation from service and the remaining payments shall be made as provided in the Agreement.

(b) Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits payable to Executive, if any, pursuant to this Agreement, that when considered together with any other severance payments or separation benefits that are considered deferred compensation (together, the “**Deferred Payments**”) under Section 409A of the Internal Revenue Code, as amended (the “**Code**”) and the final regulations and official guidance thereunder (“**Section 409A**”) will be payable until Executive has a “separation from service” within the meaning of Section 409A. Similarly, no severance payable to Executive, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Executive has a “separation from service” within the meaning of Section 409A.

(ii) Notwithstanding anything to the contrary in this Agreement, if Executive is a “specified employee” within the meaning of Section 409A at the time of Executive’s separation from service (other than due to death), then the Deferred Payments, if any, that are payable within the first six (6) months following Executive’s separation from service, will become payable on the date six (6) months and one (1) day following the date of Executive’s separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following his separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this Section 4(b)(ii) will be payable in a lump sum as soon as administratively practicable after the date of Executive’s death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(iii) Any severance payment that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations shall not constitute Deferred Payments for purposes herein. Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Payments for purposes herein.

(iv) For purposes of this Agreement, “ **Section 409A Limit** ” means two (2) times the lesser of: (x) Executive’s annualized compensation based upon the annual rate of pay paid to Executive during Executive’s taxable year preceding Executive’s taxable year of Executive’s termination of employment as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto, or (y) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Executive’s employment is terminated.

(v) The foregoing provisions are intended to comply with or be exempt from the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to so comply or be exempt. Executive and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Executive under Section 409A.

(c) Confidential Information Agreement . Executive’s receipt of any payments or benefits under Section 3 will be subject to Executive continuing to comply with the terms of the Confidential Information Agreement (as defined in Section 7) and the provisions of this Agreement.

(d) No Duty to Mitigate . Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any earnings that Executive may receive from any other source reduce any such payment.

5. Limitation on Payments . In the event that the severance benefits provided for in this Agreement or otherwise payable to Executive (i) constitute “parachute payments” within the meaning of Section 280G of the Code and (ii) but for this Section 5, would be subject to the excise tax imposed by Section 4999 of the Code, then Executive’s severance benefits under Section 3 will be either:

- (a) delivered in full, or
- (b) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of severance benefits, notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting “parachute payments” is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: (i) reduction of cash payments, which shall occur in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (ii) reduction of acceleration of vesting of equity awards, which shall occur in the reverse order of the date of grant for such stock awards (i.e., the vesting of the most recently

granted stock awards will be reduced first); and (iii) reduction of other benefits paid or provided to the Executive, which shall occur in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced. If more than one equity award was made to the Executive on the same date of grant, all such awards shall have their acceleration of vesting reduced pro rata. In no event shall the Executive have any discretion with respect to the ordering of payment reductions.

Unless the Company and Executive otherwise agree in writing, any determination required under this Section 5 will be made in writing by a nationally recognized firm of independent public accountants selected by the Company (the “**Accountants**”), whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Executive will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 5.

6. Definitions.

(a) Cause. For purposes of this Agreement, “**Cause**” means: (i) Executive’s act of personal dishonesty in connection with his responsibilities as an employee that is intended to result in Executive’s substantial personal enrichment; (ii) Executive being convicted of, or pleading no contest or guilty to, (x) a misdemeanor that the Company reasonably believes has had or will have a material detrimental effect on the Company, or (y) any felony; (iii) Executive’s gross misconduct; (iv) Executive’s willful and continued failure to perform the duties and responsibilities of his position after there has been delivered to Executive a written demand for performance from the Company that describes the basis for the Company’s belief that Executive has not substantially performed his duties and Executive has not corrected such failure within thirty (30) days of such written demand; or (v) Executive’s material violation of any written Company employment policy or standard of conduct.

(b) Good Reason. For purposes of this Agreement, “**Good Reason**” means Executive’s resignation within thirty (30) days following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following, without Executive’s consent: (i) a material reduction of Executive’s authority, duties or responsibilities, unless Executive is provided with a comparable position; for purposes of clarification, should the Company be acquired and made part of a larger entity, whether as a subsidiary, business unit or otherwise and Executive by virtue of such event, experiences a material reduction of Executive’s authority, duties or responsibilities (for example, but not by way of limitation, if the Chief Financial Officer of the Company remains the Chief Financial Officer of the Company following an acquisition where the Company becomes a wholly owned subsidiary of the acquirer, but is not made the Chief Financial Officer of the acquiring corporation), such material diminution will constitute “Good Reason” under this subsection; provided, however, a reduction in authority, duties, or responsibilities solely by virtue of the Company becoming privately held pursuant to a transaction or Company action(s) endorsed by a majority of the members of the Board (as, for example, when the Chief Financial

Officer of the Company remains as such following the Company becoming privately held, but is not the Chief Financial Officer of a publicly traded Company) will not constitute “Good Reason”; (ii) a material reduction by the Company (or its successor) in Executive’s base compensation as in effect immediately prior to such reduction, unless the Company also similarly reduces the base compensation of all other executives of the Company; or (iii) a material change in the geographic location of Executive’s primary work facility or location; provided, that a relocation of fifty (50) miles or less from Executive’s then present location or to Executive’s home as his primary work location will not be considered a material change in geographic location. In order for an event to qualify as Good Reason, Executive must not terminate employment with the Company without first providing the Company with written notice of the acts or omissions constituting the grounds for “Good Reason” within ninety (90) days of the initial existence of the grounds for “Good Reason” and a reasonable cure period of not less than thirty (30) days following the date of such notice, and such grounds must not have been cured during such time.

7. Confidential Information. Executive confirms his continuing obligations under the Proprietary Information and Inventions Agreement dated as of [DATE] (the “Confidential Information Agreement”).

8. Successors.

(a) The Company’s Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company’s business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term “Company” will include any successor to the Company’s business and/or assets which executes and delivers the assumption agreement described in this Section 8(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Executive’s Successors. The terms of this Agreement and all rights of Executive hereunder will inure to the benefit of, and be enforceable by, Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

9. Notices.

(a) General. Notices and all other communications contemplated by this Agreement will be in writing and will be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or when delivered by a private courier service such as UPS, DHL or Federal Express that has tracking capability. In the case of Executive, mailed notices will be addressed to him at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the Chief Executive Officer of the Company.

(b) Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason or as a result of a voluntary resignation will be communicated by a

notice of termination to the other party hereto given in accordance with Section 9(a) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason will not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing Executive's rights hereunder.

10. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement will continue in full force and effect without said provision.

11. Integration. This Agreement represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral. This Agreement may be modified only by agreement of the parties by a written instrument executed by the parties that is designated as an amendment to this Agreement.

12. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

13. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

14. Tax Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable taxes.

15. Governing Law. This Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

16. Arbitration.

(a) The Company and Executive each agree that any and all disputes arising out of the terms of this Agreement, Executive's employment by the Company, Executive's service as an officer or director of the Company, or Executive's compensation and benefits, their interpretation and any of the matters herein released, will be subject to binding arbitration under the arbitration rules set forth in California Code of Civil Procedure Sections 1280 through 1294.2, including Section 1281.8 (the "**Act**"), and pursuant to California law. Disputes that the Company and Executive agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. The Company and Executive further understand that this

agreement to arbitrate also applies to any disputes that the Company may have with Executive. However, claims for workers' compensation benefits and unemployment insurance (or any other claims where mandatory arbitration is prohibited by law) are not covered by this arbitration agreement, and such claims may be presented by the Executive to the appropriate court or government agency.

(b) Procedure. The Company and Executive agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS"), pursuant to its Employment Arbitration Rules & Procedures (the "JAMS Rules"). The Arbitrator will have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. The Arbitrator will have the power to award any remedies available under applicable law, and the Arbitrator will award attorneys' fees and costs to the prevailing party, except as prohibited by law. The Company will pay for any administrative or hearing fees charged by the Arbitrator or JAMS except that Executive will pay any filing fees associated with any arbitration that Executive initiates, but only so much of the filing fees as Executive would have instead paid had he filed a complaint in a court of law. The Arbitrator will administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure, and the Arbitrator will apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS Rules conflict with California law, California law will take precedence. The decision of the Arbitrator will be in writing. Any arbitration under this Agreement will be conducted in Santa Clara County, California.

(c) Remedy. Except as provided by the Act and this Agreement, arbitration will be the sole, exclusive, and final remedy for any dispute between Executive and the Company. Accordingly, except as provided for by the Act and this Agreement, neither Executive nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative Relief. Executive understands that this Agreement does not prohibit him from pursuing any administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers' Compensation Board. This Agreement does, however, preclude Executive from pursuing court action regarding any such claim, except as permitted by law.

(e) Voluntary Nature of Agreement. Each of the Company and Executive acknowledges and agrees that such party is executing this Agreement voluntarily and without any duress or undue influence by anyone. Executive further acknowledges and agrees that he has carefully read this Agreement and has asked any questions needed for him to understand the terms, consequences, and binding effect of this Agreement and fully understands it, including that *Executive is waiving his right to a jury trial*. Finally, Executive agrees that he has been provided an opportunity to seek the advice of an attorney of his choice before signing this Agreement.

17. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by their duly authorized officers, as of the day and year first above written.

COMPANY:

INTEVAC, INC.

By: _____

Title: _____

EXECUTIVE:

[Executive]

[SIGNATURE PAGE TO *[executive's name]* SEVERANCE AGREEMENT]

INTEVAC, INC.
SEVERANCE AGREEMENT

This Severance Agreement (the “**Agreement**”) is entered into as of [DATE], (the “**Effective Date**”) by and between Intevac, Inc. (the “**Company**”), and [NAME] (“**Executive**”).

RECITALS

1. The Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Executive.
2. The Board believes that it is in the best interests of the Company and its stockholders to provide Executive with an incentive to continue his employment and to motivate Executive to maximize the value of the Company for the benefit of its stockholders.
3. The Board believes that it is imperative to provide Executive with certain severance benefits upon Executive’s termination of employment under certain circumstances. These benefits will provide Executive with enhanced financial security, incentive and encouragement to remain with the Company.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Term of Agreement. This Agreement will have a term of two (2) years, commencing on the Effective Date (the “**Term**”), subject to earlier termination as provided in this Agreement. Following the expiration of the Term, Executive’s employment with the Company will continue to remain “at-will” and may be terminated by the Company at any time with or without cause or with or without notice. For purposes of clarification, the expiration of the Term will not in and of itself entitle Executive to receive any severance and if Executive’s employment with the Company terminates for any reason following the completion of the Term, Executive will not be entitled to receive any severance benefits pursuant to Section 3(a) of this Agreement. Notwithstanding the foregoing, if prior to the expiration of the two (2)-year Term, an initial occurrence of an act or omission by the Company constituting the grounds for “Good Reason” in accordance with Section 6(b) hereof has occurred (the “**Initial Grounds**”), and the expiration date of the Company cure period (as such term is used in Section 6(b)) with respect to such Initial Grounds could occur following the expiration of the two (2)-year Term, the Term automatically will extend through the date that is thirty (30) days following the expiration of such cure period, but such extension of the Term shall only apply with respect to the Initial Grounds. If Executive becomes entitled to benefits under Section 3(a) during the Term, this Agreement will not terminate until all of the obligations under the Agreement have been satisfied.

2. At-Will Employment. Subject to the terms hereof, Executive’s employment with the Company remains “at-will” employment and may be terminated by the Company at any time with or

without cause or with or without notice. However, as described in this Agreement, Executive may be entitled to severance benefits depending upon the circumstances of Executive's termination of employment.

3. Severance Benefits.

(a) Termination without Cause or Other than Death or Disability or Resignation for Good Reason. If (x) the Company terminates Executive's employment with the Company for a reason other than Cause or Executive's death or disability or (y) if Executive resigns from such employment for Good Reason, and in each case, such termination occurs during the Term, then subject to Section 4 of this Agreement (including, but not limited to, the release requirements of Section 4(a)), Executive will receive as severance from the Company: (i) continuing payments of Executive's base salary as in effect on the date of Executive's termination, payable in accordance with the Company's standard payroll procedures for twelve (12) months from the date of such termination, plus (ii) continuing payments of \$2,000 per month, payable in accordance with the Company's standard payroll procedures for twelve (12) months from the date of such termination. The payments of clause (ii) of the prior sentence are intended to defray costs to Executive associated with continued health care coverage for Executive and Executive's eligible dependents; however, Executive may use such funds in any manner Executive sees fit.

(b) Voluntary Resignation; Termination for Cause. If Executive's employment with the Company terminates (i) voluntarily by Executive (other than for Good Reason during the Term), (ii) for Cause by the Company, or (iii) for any reason following the expiration of the Term, then Executive will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company's then-existing severance and benefits plans and practices or pursuant to other written agreements with the Company.

(c) Disability; Death. If the Company terminates Executive's employment as a result of Executive's disability, or Executive's employment terminates due to his death, then Executive will not be entitled to receive any other severance or other benefits except for those (if any) as may then be established under the Company's then-existing written severance and benefits plans and practices or pursuant to other written agreements with the Company.

(d) Exclusive Remedy. In the event of a termination of Executive's employment as set forth in Section 3 of this Agreement, the provisions of Section 3 are intended to be and are exclusive and in lieu of and supersede any other rights or remedies to which Executive or the Company otherwise may be entitled, whether at law, tort or contract or in equity, or under this Agreement (other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses). Executive will be entitled to no benefits, compensation or other payments or rights upon a termination of employment other than those benefits expressly set forth in Section 3 of this Agreement.

4. Conditions to Receipt of Severance; No Duty to Mitigate.

(a) Separation Agreement and Release of Claims. The payment of any severance set forth in Section 3(a) above is contingent upon Executive signing and not revoking a release of claims agreement with the Company (which may include an agreement not to disparage the Company, non-solicit

provisions and other standard terms and conditions) in a form reasonably acceptable to the Company (the “**Release**”) upon Executive’s termination of employment and such Release becoming effective no later than sixty (60) days following Executive’s employment termination date (such deadline, the “**Release Deadline**”). In no event will severance payments be paid or provided until the Release actually becomes effective. If the Release does not become effective by the Release Deadline, Executive will forfeit any rights to severance under this Agreement. Any severance payments under this Agreement will not commence until the 60th day following Executive’s separation from service, or, if later, such time as required by Section 4(b)(ii) below. Except as required by Section 4(b)(ii) below, any installment payments that would have been made to Executive during the sixty (60) day period immediately following Executive’s separation from service but for the preceding sentence will be paid to Executive on the 60th day following his separation from service and the remaining payments shall be made as provided in the Agreement.

(b) Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits payable to Executive, if any, pursuant to this Agreement, that when considered together with any other severance payments or separation benefits that are considered deferred compensation (together, the “**Deferred Payments**”) under Section 409A of the Internal Revenue Code, as amended (the “**Code**”) and the final regulations and official guidance thereunder (“**Section 409A**”) will be payable until Executive has a “separation from service” within the meaning of Section 409A. Similarly, no severance payable to Executive, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Executive has a “separation from service” within the meaning of Section 409A.

(ii) Notwithstanding anything to the contrary in this Agreement, if Executive is a “specified employee” within the meaning of Section 409A at the time of Executive’s separation from service (other than due to death), then the Deferred Payments, if any, that are payable within the first six (6) months following Executive’s separation from service, will become payable on the date six (6) months and one (1) day following the date of Executive’s separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following his separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this Section 4(b)(ii) will be payable in a lump sum as soon as administratively practicable after the date of Executive’s death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(iii) Any severance payment that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations shall not constitute Deferred Payments for purposes herein. Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Payments for purposes herein.

(iv) For purposes of this Agreement, “ **Section 409A Limit** ” means two (2) times the lesser of: (x) Executive’s annualized compensation based upon the annual rate of pay paid to Executive during Executive’s taxable year preceding Executive’s taxable year of Executive’s termination of employment as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto, or (y) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Executive’s employment is terminated.

(v) The foregoing provisions are intended to comply with or be exempt from the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to so comply or be exempt. Executive and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Executive under Section 409A.

(c) Confidential Information Agreement . Executive’s receipt of any payments or benefits under Section 3 will be subject to Executive continuing to comply with the terms of the Confidential Information Agreement (as defined in Section 7) and the provisions of this Agreement.

(d) No Duty to Mitigate . Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any earnings that Executive may receive from any other source reduce any such payment.

5. Limitation on Payments . In the event that the severance benefits provided for in this Agreement or otherwise payable to Executive (i) constitute “parachute payments” within the meaning of Section 280G of the Code and (ii) but for this Section 5, would be subject to the excise tax imposed by Section 4999 of the Code, then Executive’s severance benefits under Section 3 will be either:

- (a) delivered in full, or
- (b) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of severance benefits, notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting “parachute payments” is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: (i) reduction of cash payments, which shall occur in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (ii) reduction of acceleration of vesting of equity awards, which shall occur in the reverse order of the date of grant for such stock awards (i.e., the vesting of the most recently

granted stock awards will be reduced first); and (iii) reduction of other benefits paid or provided to the Executive, which shall occur in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced. If more than one equity award was made to the Executive on the same date of grant, all such awards shall have their acceleration of vesting reduced pro rata. In no event shall the Executive have any discretion with respect to the ordering of payment reductions.

Unless the Company and Executive otherwise agree in writing, any determination required under this Section 5 will be made in writing by a nationally recognized firm of independent public accountants selected by the Company (the “**Accountants**”), whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Executive will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 5.

6. Definitions.

(a) Cause. For purposes of this Agreement, “**Cause**” means: (i) Executive’s act of personal dishonesty in connection with his responsibilities as an employee that is intended to result in Executive’s substantial personal enrichment; (ii) Executive being convicted of, or pleading no contest or guilty to, (x) a misdemeanor that the Company reasonably believes has had or will have a material detrimental effect on the Company, or (y) any felony; (iii) Executive’s gross misconduct; (iv) Executive’s willful and continued failure to perform the duties and responsibilities of his position after there has been delivered to Executive a written demand for performance from the Company that describes the basis for the Company’s belief that Executive has not substantially performed his duties and Executive has not corrected such failure within thirty (30) days of such written demand; or (v) Executive’s material violation of any written Company employment policy or standard of conduct.

(b) Good Reason. For purposes of this Agreement, “**Good Reason**” means Executive’s resignation within thirty (30) days following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following, without Executive’s consent: (i) a material reduction of Executive’s authority, duties or responsibilities, unless Executive is provided with a comparable position; provided, however, that a reduction in authority, duties, or responsibilities solely by virtue of the Company being acquired and made part of a larger entity whether as a subsidiary, business unit or otherwise (as, for example, when the Chief Executive Officer of the Company remains as such following an acquisition where the Company becomes a wholly owned subsidiary of the acquirer, but is not made the Chief Executive Officer of the acquiring corporation) will not constitute “Good Reason” and provided further, a reduction in authority, duties, or responsibilities solely by virtue of the Company becoming privately held pursuant to a transaction or Company action(s) endorsed by a majority of the members of the Board (as, for example, when the Chief Executive Officer of the Company remains as such following the Company becoming privately held, but is not the Chief Executive Officer of a publicly traded

Company) will not constitute “Good Reason”]; (ii) a material reduction by the Company (or its successor) in Executive’s base compensation as in effect immediately prior to such reduction, unless the Company also similarly reduces the base compensation of all other executives of the Company; or (iii) a material change in the geographic location of Executive’s primary work facility or location; provided, that a relocation of fifty (50) miles or less from Executive’s then present location or to Executive’s home as his primary work location will not be considered a material change in geographic location. In order for an event to qualify as Good Reason, Executive must not terminate employment with the Company without first providing the Company with written notice of the acts or omissions constituting the grounds for “Good Reason” within ninety (90) days of the initial existence of the grounds for “Good Reason” and a reasonable cure period of not less than thirty (30) days following the date of such notice, and such grounds must not have been cured during such time.

7. Confidential Information. Executive confirms his continuing obligations under the Proprietary Information and Inventions Agreement dated as of [DATE] (the “Confidential Information Agreement”).

8. Successors.

(a) The Company’s Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company’s business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term “Company” will include any successor to the Company’s business and/or assets which executes and delivers the assumption agreement described in this Section 8(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Executive’s Successors. The terms of this Agreement and all rights of Executive hereunder will inure to the benefit of, and be enforceable by, Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

9. Notices.

(a) General. Notices and all other communications contemplated by this Agreement will be in writing and will be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or when delivered by a private courier service such as UPS, DHL or Federal Express that has tracking capability. In the case of Executive, mailed notices will be addressed to him at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the Chief Executive Officer of the Company.

(b) Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason or as a result of a voluntary resignation will be communicated by a notice of termination to the other party hereto given in accordance with Section 9(a) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied

upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason will not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing Executive's rights hereunder.

10. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement will continue in full force and effect without said provision.

11. Integration. This Agreement represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral. This Agreement may be modified only by agreement of the parties by a written instrument executed by the parties that is designated as an amendment to this Agreement.

12. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

13. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

14. Tax Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable taxes.

15. Governing Law. This Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

16. Arbitration.

(a) The Company and Executive each agree that any and all disputes arising out of the terms of this Agreement, Executive's employment by the Company, Executive's service as an officer or director of the Company, or Executive's compensation and benefits, their interpretation and any of the matters herein released, will be subject to binding arbitration under the arbitration rules set forth in California Code of Civil Procedure Sections 1280 through 1294.2, including Section 1281.8 (the "**Act**"), and pursuant to California law. Disputes that the Company and Executive agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. The Company and Executive further understand that this agreement to arbitrate also applies to any disputes that the Company may have with Executive. However, claims for workers' compensation benefits and unemployment insurance (or any other

claims where mandatory arbitration is prohibited by law) are not covered by this arbitration agreement, and such claims may be presented by the Executive to the appropriate court or government agency.

(b) Procedure. The Company and Executive agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. (“**JAMS**”), pursuant to its Employment Arbitration Rules & Procedures (the “**JAMS Rules**”). The Arbitrator will have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. The Arbitrator will have the power to award any remedies available under applicable law, and the Arbitrator will award attorneys’ fees and costs to the prevailing party, except as prohibited by law. The Company will pay for any administrative or hearing fees charged by the Arbitrator or JAMS except that Executive will pay any filing fees associated with any arbitration that Executive initiates, but only so much of the filing fees as Executive would have instead paid had he filed a complaint in a court of law. The Arbitrator will administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure, and the Arbitrator will apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS Rules conflict with California law, California law will take precedence. The decision of the Arbitrator will be in writing. Any arbitration under this Agreement will be conducted in Santa Clara County, California.

(c) Remedy. Except as provided by the Act and this Agreement, arbitration will be the sole, exclusive, and final remedy for any dispute between Executive and the Company. Accordingly, except as provided for by the Act and this Agreement, neither Executive nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative Relief. Executive understands that this Agreement does not prohibit him from pursuing any administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers’ Compensation Board. This Agreement does, however, preclude Executive from pursuing court action regarding any such claim, except as permitted by law.

(e) Voluntary Nature of Agreement. Each of the Company and Executive acknowledges and agrees that such party is executing this Agreement voluntarily and without any duress or undue influence by anyone. Executive further acknowledges and agrees that he has carefully read this Agreement and has asked any questions needed for him to understand the terms, consequences, and binding effect of this Agreement and fully understands it, including that *Executive is waiving his right to a jury trial*. Finally, Executive agrees that he has been provided an opportunity to seek the advice of an attorney of his choice before signing this Agreement.

17. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by their duly authorized officers, as of the day and year first above written.

COMPANY:

INTEVAC, INC.

By: _____

Title: _____

EXECUTIVE:

[Executive]

[SIGNATURE PAGE TO *[executive's name]* SEVERANCE AGREEMENT]