

SEPARATION AND RELEASE AGREEMENT
BETWEEN

KAYLEEN CANUP

And

CITY OF TENINO

Parties

This Separation and Release Agreement (“Agreement”) is between KAYLEEN CANUP (“Employee”) and the CITY OF TENINO (“City”), collectively, the “Parties.”

Recitals

EMPLOYEE has been employed by the CITY as its Clerk-Treasurer until her termination and separation date effective March 11, 2022.

EMPLOYEE was presented this Agreement on March 8, 2022. EMPLOYEE will be on paid administrative leave until the separation date of March 11, 2022.

The Parties desire to resolve all matters, known or unknown, arising out of EMPLOYEE’S employment with and separation from the CITY according to the terms, conditions and consideration included in this Agreement.

Based on the above recitals, the Parties agree that the following terms will apply only if all conditions of the Agreement are met:

Article 1. CITY OF TENINO Obligations

1.1 Separation Date. EMPLOYEE’S last day of employment is March 11, 2022 (“Separation Date”).

1.2 Payment of Regular Wages, Benefits and Accrued Paid Leave. Whether EMPLOYEE signs this Agreement or not, the CITY will pay EMPLOYEE’S regular wages through her last day of employment, plus any accrued but unused vacation/paid leave and any other pay required by law. EMPLOYEE acknowledges that these payments, together with the payments EMPLOYEE has already received, represent full payment of all compensation of any kind (including wages, paid leave, vacation, sick leave, compensation time, and bonuses, if any) earned as a result of employment with the CITY.

(a) ***WHILE ON PAID ADMINISTRATIVE LEAVE, THE CITY, THROUGH THE MAYOR OR DESIGNEE, MAY REQUEST INFORMATION RELATED TO EMPLOYEE’S JOB DUTIES DURING NORMAL BUSINESS HOURS. EMPLOYEE WILL FULLY COOPERATE WITH ANY SUCH REQUEST.***

1.3 Personnel File. EMPLOYEE's Personnel File will reflect, "Resignation", as the reason for her separation from employment.

1.4 Separation/Severance Pay and Other Consideration.

(a) In consideration for EMPLOYEES's signature on this Agreement, the CITY will pay EMPLOYEE two (2) weeks of her current salary, as Separation/Severance Pay, at the first payroll following the effective date of this Agreement, less all lawful and authorized deductions, which EMPLOYEE would otherwise not be entitled to otherwise receive. Said two (2) weeks of Separation Pay will be in addition to any obligation the CITY has under paragraph 1.2 herein.

1.5 Forfeiture of Separation/Severance Pay. If EMPLOYEE breaches any obligations under the Agreement, EMPLOYEE understands and agrees that she will be required to return Separation/Severance Pay paid pursuant to paragraph 1.4 (a) to the CITY immediately, along with any applicable interest, costs, and attorneys' fees as allowed by law. Said forfeiture of Separation Pay and benefits costs will not limit any other damages the CITY may be entitled to claim against EMPLOYEE.

1.6 Unemployment. If requested by the Washington State Employment Security Division ("Division"), the CITY will inform the Division that it will not contest EMPLOYEE's application for unemployment and will not appear at any hearing unless required to do so, as additional consideration for EMPLOYEE'S signature hereto. The CITY will do so as long as, in the CITY's opinion, the reasons given by EMPLOYEE for separation are accurate and lawful, and EMPLOYEE reports all compensation received, including any separation pay that EMPLOYEE receives under this Agreement. The CITY will truthfully respond to any information requested by the Division irrespective of its effect on EMPLOYEE's application for unemployment and such response will not be considered a breach of this Agreement by the CITY.

1.7 COBRA Continuation Coverage. The CITY makes no representation that EMPLOYEE will receive COBRA benefits but will provide them if required by law.

1.8 Termination of Benefits. EMPLOYEE's rights under any retirement or benefit plans in which she may have participated will be determined in accordance with the written plan documents governing those plans.

Article 2. EMPLOYEE's Obligations

2.1 Authority. EMPLOYEE represents and warrants that she has all necessary authority to enter into this Agreement (including, on behalf of her marital community or registered domestic partnership, if any) and that EMPLOYEE has not transferred any interest in any claims to her spouse, registered domestic partner or any third party.

2.2 No Additional Compensation or Benefits. EMPLOYEE expressly acknowledges and agrees that she has no claims or entitlement to additional compensation or benefits of any kind from the CITY, past, present or future, except as set out in this Agreement.

2.3 Benefits. EMPLOYEE acknowledges her responsibility to determine for herself the effect this Agreement may have on any benefits to which she may currently receive, or may be entitled to receive in the future, including but not limited pension, Medicare, and any other such benefits.

2.4 Representations Regarding Employment Status. EMPLOYEE understands that she is not authorized to represent herself as affiliated in any way with the CITY after the Separation Date.

2.5 References. EMPLOYEE agrees to direct requests for references to the Mayor. However, EMPLOYEE agrees and acknowledges that the Mayor, or anyone acting on the Mayor's behalf, may state that its policy is to provide only dates of employment and current or last position held. EMPLOYEE hereby consents to the release of that information.

2.6 Return of Property. EMPLOYEE agrees to promptly deliver to the Mayor or designee all CITY property within her possession, including keys, keycards, cell phones, laptop computers, , and written and electronic documents. EMPLOYEE understands that property must be returned in good working condition. No electronic data or paper documents related to EMPLOYEE's employment may be saved, posted, forwarded, or used by EMPLOYEE in any manner, and must be turned over to the CITY immediately. EMPLOYEE authorizes the CITY to withhold the value of any CITY property not returned from her final paycheck.

2.7 Cooperation Regarding Other Claims and Preservation of Privilege. If any claim is asserted by or against the CITY as to which she has relevant knowledge, EMPLOYEE will reasonably cooperate with the CITY in the prosecution or defense of that claim by providing truthful information and testimony. EMPLOYEE will also continue to respect and preserve the attorney-client privilege, the work product doctrine, and any other confidential information to which she was privy during employment.

2.8 Non-Disclosure. EMPLOYEE agrees, except as required by law or directed in writing by the CITY, that she will not disclose to any person other than her attorney any information about the CITY not generally known to the public and will not disclose any information deemed by the CITY to be confidential, sensitive and proprietary or a trade secret. "Disclosure" for the purposes of her Agreement includes, but is not limited to, information conveyed by EMPLOYEE through gossip, innuendo, or rumor, whether in person, electronically, or through any other manner of communication. If EMPLOYEE is unsure whether particular information is disclosable, she will contact the Mayor prior to such disclosure.

2.9 Non-Interference and Non-Solicitation. EMPLOYEE will (a) not interfere directly or indirectly with the CITY's workplace or business, and (b) interfere directly or indirectly with the employment of any employees of the CITY, including but not limited to, any solicitation or assistance of any employee to leave employment with the CITY, and (c) not make any requests of the CITY whose purpose would violate this Agreement.

2.10 Injunctive Relief. EMPLOYEE agrees that in the event EMPLOYEE breaches any of the provisions in this Agreement, damages may be difficult, if not impossible, to ascertain. EMPLOYEE agrees that, in addition to and without limiting any other remedy or right it may have, the CITY shall have the right to an immediate injunction or such other equitable relief enjoining any such threatened or actual breach. The existence of her right shall not preclude the CITY from pursuing any other rights and remedies at law or in equity which it may have, including the recovery of damages.

2.11 Agreement Confidentiality. As further specific consideration, CITY agrees that the terms of this Agreement are intended to be confidential between the Parties to the extent allowed

by law. EMPLOYEE agrees that any disclosure of this Agreement by the CITY required by law, such as under the Washington Public Records Act, is not a violation by the CITY of this Agreement.

2.12 Non-Disparagement. As further specific consideration for the CITY's obligations to EMPLOYEE under the terms of this Agreement, EMPLOYEE and CITY agree not to make any disparaging statements about her employment at the CITY, about this Agreement, as well as about current and former staff, council members, partners, agents, vendors, attorneys, consultants, agents, or any other person or entity that is affiliated with the CITY, after separation from employment, either written or verbal.

2.13 Use of Third Parties. It is a violation of this Agreement for EMPLOYEE to direct or influence a third party to participate in any action that would be a violation if EMPLOYEE engaged in the same action.

2.14 Consideration Period. It is a breach of this Agreement if EMPLOYEE participated in any action while considering this Agreement that would be a violation of the Agreement once it becomes effective, even if the CITY does not become aware of such action until after the Agreement becomes effective.

2.15 Liquidated Damages. In addition, for each breach of this Agreement, EMPLOYEE shall be obligated to pay \$500 per occurrence as liquidated damages and not as a penalty, which she acknowledges represents a fair and reasonable estimate of damages likely to be sustained by the CITY for each time that EMPLOYEE breaches the Agreement. The existence of her right shall not preclude the CITY from pursuing any other rights and remedies at law or in equity which it may have against EMPLOYEE, including return of all consideration paid by the CITY to EMPLOYEE under the Agreement, interest allowed by law, and attorney's fees and costs related hereto.

2.16 Return of Consideration. EMPLOYEE understands that a violation of this Agreement is grounds for revocation of the Agreement and EMPLOYEE will be obligated to immediately return any and all consideration provided to her as a result of the Agreement as further described in this Agreement.

2.17 Waiver and Release.

(a) EMPLOYEE hereby releases and forever discharges any and all of the "Released Parties" (defined herein) from any and all claims of any kind, known or unknown, that arose on or before the date that she signed this Agreement, including but not limited to, claims for:

- wrongful termination or constructive discharge, including claims based on violation of public policy; breach of agreements, including Collective Bargaining Agreements or contracts of employment, representations, policies or practices related to EMPLOYEE's relationship with any Released Party; or based on any legal obligation owed by any Released Party;
- violation of federal, state, or local laws, ordinances, or executive orders prohibiting discrimination, harassment or retaliation, or requiring accommodation, on the basis of race, ancestry, creed, color, religion, national origin, pregnancy, childbirth or related medical conditions, families with children, sex, genetic information, marital status, sexual orientation, gender expression or gender identity, political ideology,

age, honorably discharged veteran or military status, sensory, physical, or mental impairment or other legally protected characteristic or activity;

- wages (including overtime pay) or compensation of any kind (including attorney's fees or costs);
- tortious interference with contract or expectancy; fraud or negligent misrepresentation; breach of privacy, defamation or libel; intentional or negligent infliction of emotional distress; unfair labor practices; breach of fiduciary duty;
- violation of the Washington Law Against Discrimination; the Washington Prohibited Employment Practices Law; the Washington Minimum Wage Act; Washington's Little Norris-LaGuardia Act; the Washington Family Leave Act; the Washington Family Care Act; the Washington Military Family Leave Act; the Washington law permitting leave for victims of domestic violence, sexual assault or stalking; the Washington Fair Credit Reporting Act; the retaliation provisions of the Washington Workers' Compensation Act; the Washington Industrial Safety and HEALTH Act (WISHA); the Washington Public Employment Relations Act, the Affordable Care Act, including any and all amendments to the above, to the fullest extent permitted by law;
- violation of the Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA); the Fair Labor Standards Act (FLSA); the Labor Management Relations Act (LMRA); the Polygraph Protection Act; the Racketeer Influenced and Corrupt Organizations Act (RICO); the Electronic Communications Privacy Act; the Uniform Services Employment and Re-Employment Rights Act (USERRA); the Sarbanes-Oxley Act; the Civil Rights Act of 1964; Title VII; Sections 1981 through 1988 of Title 42 of the United States Code; the Civil Rights Act of 1991; the Equal Pay Act of 1963; the Lilly Ledbetter Fair Pay Act; the Americans with Disabilities Act of 1990 (ADA); the federal Family and Medical Leave Act of 1993 (FMLA); the Worker Adjustment and Retraining Notification Act (WARN); the Occupational Safety and HEALTH Act (OSHA); the Sarbanes-Oxley Act of 2002; the Retirement Income Security Act of 1974 (ERISA); the National Labor Relations Act (NLRA); the Immigration Reform and Control Act (IRCA); including any and all amendments to the above, to the fullest extent permitted by law;
- the Age Discrimination in Employment Act of 1967 (ADEA); the Older Workers Benefit Protection Act (OWBPA); and
- Violations of any and all similar federal, state and local laws, to the fullest extent permitted by law.

(b) "Released Party" or "Released Parties" includes the CITY, its predecessor entities, its affiliates and partners, and the benefit plans of each such entity; and with respect to each such entity, all past, present and future council members, employees, managers, supervisors, fiduciaries, directors, officers, representatives, agents, attorneys, consultants, assigns, insurers, whether acting in their individual or official capacities, and any other persons acting by, or through, under, or in concert with any of the persons or entities listed in this paragraph; and with respect to each such entity and individual, all predecessors, successors and assigns.

(c) EMPLOYEE agrees that, except as may be required by subpoena, court order, or other force of law, EMPLOYEE will not in any way assist any individual or entity in commencing or prosecuting any claim, action, or proceeding, or contemplating such claim, action, or proceeding, against any Released Party, arising out of, or related to, her employment with the CITY or the Agreement.

(d) EMPLOYEE understands that she is releasing potentially unknown claims, and that she has limited knowledge with respect to at least some of the claims being released. EMPLOYEE acknowledges that there is a risk that, after signing this Agreement, she may learn information that might have affected EMPLOYEE's decision to enter into the Agreement. EMPLOYEE assumes her risk and all other risks of any mistake in entering into this Agreement. EMPLOYEE acknowledges her understanding of this Agreement, and the release and discharge contained herein, and knowingly enters into this Agreement. EMPLOYEE is giving up all rights and claims of any kind, known or unknown, except for the rights expressly provided in this Agreement, if any. EMPLOYEE further acknowledges she had a reasonable opportunity to review this Agreement, and to have it reviewed by anyone who EMPLOYEE would rely on for advice about entering into this Agreement, including a competent attorney.

(e) This Agreement does not affect EMPLOYEE's rights, if any, to receive 401(k) benefits, medical plan benefits, unemployment compensation or workers' compensation benefits, nor does it release any claims or rights which as a matter of law cannot be waived.

2.18 Affirmations.

(a) EMPLOYEE affirms that she will report all hours worked as of the Separation Date.

(b) EMPLOYEE understands that the CITY will deduct lawful and authorized deductions, including federal and any state taxes, from payments made under this Agreement. The CITY makes no representations as to the tax consequences to EMPLOYEE. EMPLOYEE acknowledges that she had adequate time to consult a financial advisor, attorney, or accountant before signing this Agreement.

(c) EMPLOYEE affirms that she has not been denied, any leave requested under the federal or state Family and Medical Leave Acts, or any legally required reasonable accommodation.

(d) EMPLOYEE agrees not to apply for any position of employment with the CITY for 18 months after job separation.

(e) EMPLOYEE affirms that she has not and will not initiate any claims, suit, action, or arbitration before any federal, state or local judicial, administrative or other forum with respect to any matter arising out of or connected with her employment with the CITY or the termination of her employment; and that, without subpoena, she will not, except at the CITY's request, testify in any judicial or administrative proceedings to which any Released Party is a party regarding any matter involving the affairs of any Released Party.

Article 3. General Provisions

3.1 Non-Admission. This Agreement shall not be construed as an admission by the CITY or any Released Party of any liability, breach of any agreement, or violation of any statute, law or regulation, nor shall it be construed as an admission of any deficient performance or breach of any professional obligation.

3.2 Governing Law. This Agreement is governed by the laws of the State of Washington that apply to contracts executed and to be performed entirely within the State of Washington.

3.3 Headings Not Controlling. The headings in the Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.

3.4 Attorney's Fees. In any dispute involving this Agreement, each Party shall be responsible for their own attorney's fees and costs.

3.5 Severability. It is further understood and agreed that if any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable.

3.6 Complete Agreement. This Agreement represents and contains the entire understanding between the Parties in connection with the subject matter of the Agreement. It is expressly acknowledged and recognized by all Parties that here are no oral or written collateral agreements, understandings or representations between the Parties other than as contained in this Agreement. Any modifications to this Agreement must be in writing and signed by both Parties to be effective. EMPLOYEE acknowledges that this Agreement requires approval by the Tenino City Council in a public meeting.

3.7 Counterparts. This Agreement may be executed in duplicate originals, each of which is equally admissible in evidence, and each original shall fully bind each party who executed it.

Article 4. Older Workers' Benefit Protection Act Provisions

In accordance with the requirements of the Older Workers' Benefit Protection Act, EMPLOYEE expressly acknowledges the following:

4.1 Independent Legal Counsel. EMPLOYEE is advised to consult with an independent attorney before signing this Agreement. EMPLOYEE acknowledges that, if she desired to consult an attorney, she had an adequate opportunity to do so.

4.2 Consideration Period. EMPLOYEE has twenty-one (21) calendar days from the date the original Agreement was given to her to consider the Agreement before signing it. EMPLOYEE may use as much or as little of her twenty-one (21) day period as she wishes before signing. If EMPLOYEE does not sign and return the Agreement within her twenty-one (21) day period, it will not become effective or enforceable, and EMPLOYEE will not receive the benefits described in the Agreement except as required by law.

4.3 Revocation Period and Effective Date. **EMPLOYEE has seven (7) calendar days after signing this Agreement to revoke it.** To revoke the Agreement after signing it,

EMPLOYEE must deliver a written notice of revocation to the Mayor before the seven (7) day period expires. The Agreement shall not become effective until the eighth (8th) calendar day after EMPLOYEE signs it ("Effective Date"). If EMPLOYEE revokes the Agreement, it will not become effective or enforceable, and she will not receive the benefits described in the Agreement except as required by law.

Article 5. Acceptance of Agreement

5.1 Acceptance. EMPLOYEE agrees she has had a reasonable opportunity to review the Agreement, understands its terms, and voluntarily enters into the Agreement. EMPLOYEE agrees that any modifications, material or otherwise, made to the Agreement do not restart or affect in any manner the original twenty-one (21) calendar days consideration period. If EMPLOYEE is willing to enter into this Agreement she must initial each page in the lower right-hand corner, sign the signature page and timely return to the Mayor. If EMPLOYEE is signing this Agreement before the twenty-one calendar day consideration period it is because she has decided to waive and not wait for the full twenty-one (21) day period, even though she has a right to do so.

This Agreement consists of nine (8) pages, not including any exhibits.

EMPLOYEE:

Kayleen Canup
KAYLEEN CANUP

March 29, 2022
Date

CITY OF TENINO:

Wayne Fournier, Mayor

Date