

SEPARATION AND RELEASE AGREEMENT

THIS SEPARATION AND RELEASE AGREEMENT (this "Agreement"), is made and entered into this 18 day of July 2018, by and between the CITY OF SAMMAMISH, WASHINGTON, a municipal corporation ("City") and LYMAN HOWARD ("Howard") as follows:

Recitals

A. The City employs Howard as its City Manager pursuant to that Employment Agreement between Howard and the City, initially entered into June 16, 2015 and subsequently amended ("Employment Agreement"). Howard has provided strong and effective service to the City since his employment began as the City's Finance Director in April 2001.

B. The parties have mutually agreed to terminate their employment relationship, on August 1, 2018 ("Separation Date").

C. The City and Howard desire to effectuate a smooth transition of Howard's position, in accordance with this Agreement.

NOW, THEREFORE:

1. Recitals A through C above are incorporated herein.
2. Howard confirms that effective on August 1, 2018, his employment for the City shall terminate and he shall no longer perform the duties of City Manager. Howard further acknowledges and agrees that he waives any advanced written notice of termination of employment, as may otherwise be applicable to his position pursuant to state law or the Employment Agreement.
3. At the end of the payroll period ending August 15, 2018, Howard shall be paid his regular wages earned ("Accrued Wages") and other similar benefits (including customary and accrued City contributions to Howard's retirement plan and deferred compensation plan) through the Separation Date ("Accrued Benefits"). Required payroll and withholding taxes shall be deducted from the Accrued Wages and the Accrued Benefits, as applicable.
4. In reliance on Howard's voluntary representations and releases in this Agreement and commitment to assist the City in effectuating a smooth transition of his responsibilities, and as consideration for all of the promises and agreements of every sort herein made by Howard, the City will pay a total of Three Hundred Thousand Dollars (\$300,000.00) on August 20, 2018, allocated as follows: deductions of 6.2% and 7.2% (up to the allowable IRS 401a contribution limit) representing the city's contributions to Howard's 401a plan; a deduction of 6.2% (up to the allowable IRS 401a contribution limit) representing Howard's 401a matching contribution; 380

hours of accrued vacation; 25% of all available but unused sick leave; and a lump sum contribution of \$37,000 to Howard's 457 plan, with the residual amount distributed to Howard's bank account after required payroll and withholding taxes are deducted. These payments are considered compensation and referred to herein as "Additional Consideration"; provided, that Howard complies with the terms of this Agreement in full and does not otherwise revoke his acceptance of this Agreement pursuant to Paragraph 16 below.

5. That period from the Separation Date through January 5, 2019 shall be deemed the "Transition Period." During the Transition Period, Howard shall not be entitled to receive vacation benefits, sick leave and the car allowance or any other consideration except as set forth in this Agreement. Howard shall make himself reasonably available to the City during normal City office hours to answer any questions regarding, and/or to assist in, any pending or outstanding projects handled by him as City Manager. Howard shall reasonably assist and cooperate with the City in the transition of his duties to other individuals. Following the "Transition Period," Howard shall cooperate with the City in any litigation that arose or arises during the Howard's term of employment covered by the Employment Agreement. If Howard engages in such litigation cooperation activity after the Transition Period, he shall be compensated at an hourly rate based on his current salary (\$95.00) and his reasonable travel expenses shall be paid by the City.

6. Payment for Accrued Wages and Accrued Benefits shall be made by the City to Howard at the end of the payroll period ending on the Separation Date, in accordance with the City's normal payroll practices.

7. Howard acknowledges that his group health (medical, dental, vision) insurance benefits will terminate on the last date of the last month of his employment, that is, August 31, 2018. Notwithstanding, and provided that Howard elects to continue coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), as more fully detailed in the COBRA notice to be provided by the City's plan administrator in accordance with the City's standard practices and procedures, the City shall pay directly to the insurer the cost of Howard's continued health care coverage through August 31, 2019 ("Continued COBRA Coverage").

8. Howard agrees that, except for the Accrued Wages, Accrued Benefits, Additional Consideration and Continued COBRA Coverage, he is not entitled to receive, and will not claim any bonuses, commissions, benefits, compensation, additional sick leave or vacation, or profit sharing.

9. In exchange for the promises herein, Howard agrees to, and by signing this Agreement does, forever waive and release the City and its officers, officials, directors, employees, agents, representatives, successors and assigns (collectively, "Released Parties") from all known and unknown claims, complaints or damages which Howard ever had, now has, or may claim to have as of the Effective Date of this Agreement, including, without limiting the generality of the foregoing, any claim regarding any aspect of Howard's employment or termination, and any claim or cause of action under any federal, state or local law or regulation or the Employment Agreement. Specifically included in this agreement to release, discharge and

hold harmless are all contract claims, tort claims, employment claims and any other claims including but not limited to, those arising under the Employment Agreement and the Fair Labor Standards Act, Employment Retirement Income Security Act of 1974, Civil Rights Acts of 1866, 1964 and 1991, as amended, Rehabilitation Act of 1973, Equal Pay Act of 1963, Americans With Disabilities Act, Age Discrimination in Employment Act of 1967, Older Workers Benefit Protection Act, Federal Family and Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Washington Family Care Act, Washington Family Leave Act, all Washington State laws against discrimination, and any other federal, state or local laws, regulations, ordinances, or common law theories of recovery (collectively, the "Claims"). Howard reserves all rights to enforce this Agreement and to obtain accrued and earned benefits.

10. Similarly, in exchange for the promises herein, the City agrees to, and by signing this Agreement does, forever waive and release Howard from, and shall defend and indemnify Howard against, all pending or otherwise known, and unknown, claims, complaints, judgments, settlements or damages of any kind which the City, or any of its officers, officials, directors, employees, agents, representatives, successors and assigns (collectively, "Releasing Parties") ever had, now has, or may claim to have against Howard as of the Effective Date of this Agreement or which are asserted against Howard in connection with his work for the City. Specifically excluded in this agreement to release, discharge and hold harmless are judgments against Howard for claims proven by the City to constitute fraud and criminal acts.

11. Howard will not at any time in the future file or maintain any lawsuit in court or arbitration or other claims for personal relief concerning any of the Claims released in this Agreement; provided however, that this provision will not apply to any action challenging the validity of the release and waiver set forth in this Agreement under the Older Workers' Benefit Protection Act, as applicable. This provision shall not limit Howard from commencing a proceeding for the sole purpose of enforcing his rights under this Agreement. In addition, the foregoing does not affect any right to file an administrative charge with any administrative agency relating to the Claims, subject to the restriction that if any such charge is filed, Howard agrees not to seek or in any way obtain or accept any monetary award, recovery, settlement or relief in connection with any such charge.

12. Howard represents and warrants that on the Separation Date, he will return to or leave with the City, as appropriate, any and all documents, computer and computer-related hardware and software items, disks, customer lists, business cards, credit cards, City identification, financial and business and all other materials, equipment or other things in his possession, custody or control that were produced or received by Howard during his employment with the City relating to the City's business or that otherwise are the property of the City (collectively, the "Employee Items"). If Howard desires to have copies of Employee Items that are public records, as defined under the Public Records Act, Employee shall identify such public records for the City, and the City shall provide copies of such public records that are not exempt from disclosure in a reasonable period of time after the Separation Date, without charge to Howard. Howard shall remove all personal belongings and items from City Hall on or before the Separation Date.

13. The City shall not disparage Howard and Howard shall not disparage the City, including its officials and employees. For purposes of this Paragraph, the term “disparage” includes written or oral comments or statements to the media or other third parties, except any written or oral comments or statements made as sworn testimony as part of any litigation, that may reasonably be expected to have a significant adverse effect in any manner on: (i) the conduct of the City’s operations; (ii) the ability of Howard to obtain future employment; or (iii) the business or professional reputation of the City, including its officials and employees, or of Howard. The City shall respond to any reference request for Howard by confirming Howard’s dates of employment, position held, and compensation as of the Termination Date, and shall inform the requestor that it is the City’s policy to provide only such information in response to reference requests. Further, one member of the City Council shall write and provide to Howard a mutually acceptable letter of commendation describing Howard’s service and activity for the City. The City and Howard understand and agree that this Paragraph is a material provision of this Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that either the City or Howard would be irreparably harmed by violation of this Paragraph.

14. Howard represents to the City that he is signing this Agreement voluntarily and with a full understanding of and agreement with its terms. Howard understands and agrees that he is waiving legal rights by signing this Agreement.

15. This Agreement shall not be construed as an admission by the City of any liability to Howard (except as provided herein), breach of any agreement between the City and Howard, or violation by the City or Howard of any law or regulation.

16. Howard acknowledges that he has read this Agreement and understands it, and that it is advisable for him to consult with an attorney before signing this Agreement. Howard also acknowledges that he has a period of twenty-one (21) calendar days following execution of this Agreement by the City within which to review and consider this Agreement before signing it (“Consideration Period”). Howard expressly agrees that this Consideration Period is waived to the extent that this Agreement is signed by Howard and delivered to the City within such Consideration Period. The date on which Howard signs and delivers this Agreement shall be considered the “Effective Date” of this Agreement. Howard has seven (7) calendar days from the Effective Date to revoke his signature (“Revocation Period”). Any such revocation must be in writing and must be delivered to the City Clerk at the following address:

City of Sammamish City Hall
801 228th Ave SE
Sammamish, WA 98075

If Howard revokes this Agreement, he shall not be eligible to receive any part of the Additional Consideration or any contributions towards Continued COBRA Coverage. Howard acknowledges that he cannot revoke this Agreement once this Revocation Period has expired.

17. HOWARD IS ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS SEPARATION AND RELEASE AGREEMENT. HOWARD ACKNOWLEDGES THAT HE HAS BEEN GIVEN ADEQUATE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE EXECUTING THIS AGREEMENT. Howard has consulted with an attorney regarding this Agreement. The City shall reimburse Howard for the reasonable cost of this consultation, review and related communications.

18. This Agreement may be amended in a writing signed by Howard and by a duly authorized representative of the City.

19. It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible. In the event that any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable, the Howard, at his election, may choose to rescind the Agreement, and effective immediately upon such rescindment ("Rescindment Date"), Howard shall not be eligible to receive any remainder of the Additional Consideration due and owing, and contributions towards Continued COBRA Coverage paid by the City shall cease, as of the Rescindment Date; and further, Howard shall reimburse the City for the full monetary value of Additional Consideration and Continued COBRA Coverage contributions paid to him, or paid on the his behalf, as of the Rescindment Date. In the event of Howard's rescindment, the City reserves the right to take any and all collection or other enforcement action by all means available, at law and in equity, to collect any unpaid balance due and owing, plus statutory interest. If not so elected, the validity, legality and enforceability of the remainder hereof will not in any way be affected or impaired thereby and any such provision or provisions will be enforced to the fullest extent permitted by law. Moreover, if any one or more of the provisions contained in this Agreement is held to be excessively broad as to duration, scope, activity or subject, such provisions shall be construed by limiting and reducing them so as to be enforceable to the maximum extent compatible with applicable law.

20. This Agreement, and the provisions contained in it, shall not be construed or interpreted for, or against, any party to this Agreement because that party drafted or caused that party's legal representatives to draft any of its provisions. Recognizing that this Agreement is complete and represents the parties' entire agreement, the parties agree that each shall never introduce as evidence or seek to rely upon draft language in previous, unaccepted versions of the parties' proposals for a separation agreement.

21. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington, without reference to its choice of law rules. The parties hereby irrevocably consent to the jurisdiction of the state courts for King County and the federal courts for the Western District of Washington for purposes of resolving any dispute under this Agreement and expressly waive any objections as to venue in any such courts.

22. This Agreement sets forth the entire agreement and understanding between Howard and the City and merges and supersedes any and all prior agreements, representations,

discussions, and understandings of every kind and nature, written and oral, between Howard and the City concerning the subject matter hereof.

IT IS SO AGREED:

LYMAN HOWARD:

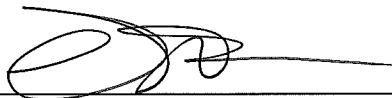


Lyman Howard

Date: 7/18/018

THE CITY:

The City of Sammamish, Washington

By: 

Christie Malchow, Mayor

Date: 7/19/2018