

SEPARATION AGREEMENT AND RELEASE

THIS SEPARATION AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between the City of Edmonds, a Washington municipal corporation (the "City"), and N. Scott James ("James"), hereinafter "the parties," as of the later date entered by the parties below.

RECITALS

- A. James has served as the City's Director of Finance since March 14, 2014 under the terms of an Employment Agreement dated February 26, 2014; and
- B. James and the City agree it is in their respective best interests to separate employment and have reached the following compromise regarding James' separation from employment with the City; and
- C. James' last date of employment shall be June 1, 2020.

AGREEMENT

This Agreement is a full and final settlement of any and all claims between the City and James, including any claims arising from his separation of employment, as follows:

1. **Termination.** James' employment with the City is terminated effective June 1, 2020, pursuant to the terms of the parties' Employment Agreement, which authorizes the Mayor to remove James from his at-will position with or without cause.
2. **Severance.** The parties' Employment Agreement provides that, as James is being removed from his position other than for cause after serving as Director of Finance for more than five years, he is entitled to receive severance pay equal to four (4) months' salary, and payment for any unused leave as provided in Chapter 2.35 of the Edmonds Municipal Code.
3. **Health Insurance.** James' health care coverage will remain in place through June 30, 2020. James has been notified that, in accordance with federal law, he will be eligible for COBRA coverage effective July 1, 2020.
4. **Consideration for Agreement and Release.** As consideration for this Agreement and the release of claims contained herein, the City has agreed to pay James additional severance pay in an amount equal to two (2) additional months' salary, for a total of six (6) months' severance pay. In addition, the City will provide you the equivalent value of six (6) months of COBRA premium costs. The severance pay and health insurance premium costs will be paid to James as a lump sum upon separation from



employment. If requested by James, the City will deposit the COBRA premium cost portion of the lump sum into his VEBA account.

The parties agree that the separation benefits described in Section 4 are designed to aid James' transition to alternative employment, and that the specified benefits do not constitute benefits to which he would otherwise be entitled upon separation under existing employee benefit plans provided by the City or under any pre-existing agreement. The parties further agree that compensation described in Section 4 shall be subject to payroll withholdings as required by law.

5. **Unemployment Benefits.** The City will not contest James' application for unemployment insurance benefits as a result of this Agreement. The parties acknowledge that eligibility for unemployment insurance benefits is determined by the State of Washington, and that the City can make no guarantee regarding award of benefits. For purposes of unemployment insurance, the City will note James was separated for general performance concerns and not misconduct.
6. **Employment Inquiries.** Any inquiries for future employment from prospective employers shall be referred to the Human Resources Department who will respond only by stating James' dates of employment, classification and rate of pay.
7. **Release.** James accepts the benefits contained in this Agreement in full satisfaction of all his rights and interests relating to his employment with and separation from the City and, in consideration therefore, James (including his heirs, successors, assigns and estates) hereby releases the City, its affiliates, successors, predecessors, parent, subsidiaries, past and present officials, directors, managers, agents, representatives and employees (collectively, the "Released Parties") from any and all claims and causes of action arising from or out of his employment or the termination thereof, including but not limited to rights or causes of action arising under the laws of the State of Washington or the United States of America. This release specifically covers, but is not limited to, any claims of discrimination based on race, color, national origin, sex, marital status, age (including claims under the Age Discrimination in Employment Act), physical or mental disability, or other protected status under any federal, state, or local law, rule, or regulation; any contract, public policy and/or tort claims arising under federal, state, or local law; any claims arising under federal, state or local law; any claims for unpaid wages or benefits under City policies or wage laws; any contract or tort claims arising under federal, state, or local law based on promises made or allegedly made by the City to James; and any claims under any express or implied contract or legal restrictions on the City's right to terminate its employees. James releases the Released Parties from all such claims and promises not to assert any such claims or causes of action (the only exceptions being a suit filed solely to challenge the validity of this release under the ADEA; a claim for benefits under worker's compensation; or a suit based on acts or omissions occurring after James signs this separation agreement). James promises to hold harmless and indemnify the Released



Parties from any and all actions, causes of action, claims or demands of every kind and nature whatsoever, relating to or arising out of his employment or its termination. This promise to hold harmless and indemnify includes the reasonable costs of legal counsel of the City's choosing. **This release is intended to be all encompassing, and to fully resolve all matters and relations between the parties up to the date James signs this Agreement.**

8. **Continuing Rights.** Nothing in this Agreement shall be construed to prohibit James from filing a charge with, reporting potential violations of law to, or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission or a comparable state or local agency, or to any other federal or state agency responsible for enforcement of the law (hereinafter a "Government Agency"). Notwithstanding the foregoing, James hereby waives and releases his right to recover any form of personal relief from the City, including but not limited to monetary damages or reinstatement, in connection with any such charge, complaint, investigation or other proceeding conducted by a Government Agency, whether initiated by James or any other person or entity; provided that this waiver and release does not apply to any whistleblower incentive award from the Securities and Exchange Commission.
9. **No Wrongdoing.** James agrees that this Agreement is not an admission by the City, or any of the Released Parties, that it has violated any law or failed to fulfill any duty to James. The City specifically denies any wrongdoing.
10. **Advice of Attorney.** The City advises James to seek the advice of an attorney before signing this Agreement.
11. **ADEA.** James acknowledges that, pursuant to the provisions of the Age Discrimination in Employment Act, he has been offered the opportunity to review a copy of this Separation Agreement for a period of twenty-one (21) days from the date of the City's final employment separation offer ("Review Period") to consider the above release of claims. The parties agree that any changes to this Agreement during the Review Period, whether material or immaterial, shall not restart the running of the twenty-one (21) day Review Period. James shall have seven (7) calendar days following the date on which James signs this Agreement (the "Revocation Period") to revoke his acceptance of the Agreement and the release set forth in this Agreement, and this Agreement shall not become effective until the Revocation Period has expired.
12. **Entire Agreement.** This is the entire agreement between the parties. Any understanding, written or oral, relating to the separation of James' employment which arose on or before the date of execution of this Agreement shall be deemed merged with its provisions.
13. **Amendments.** This Agreement shall not be amended except in writing and with the express written consent of the parties hereto.

14. **Severability.** To the fullest extent permitted by the law, the various considerations and understandings contained in this Agreement shall be severable. In the event that any provision is struck down by a court of competent jurisdiction, the remaining provisions shall survive.
15. **Venue and Governing Law.** In any action to enforce or interpret the terms of this Agreement, venue shall lie in Snohomish County, Washington by the express stipulation of the parties hereto. This Agreement shall be governed by the laws of the State of Washington. In any such action to enforce or interpret the terms of this Agreement, the substantially prevailing party shall be entitled to reimbursement by the other party of the reasonable attorney's fees and costs associated with that action.
16. **Public Record.** James understands and acknowledges that disclosure of this Agreement may be required under the Public Records Act, chapter 42.56 RCW, and other legal requirements applicable to public entities.
17. **Confidentiality.** James agrees to keep the terms of this Agreement confidential, except for communications about it with his immediate family, attorney, or accountants or other professional financial advisors. James further agrees to advise such individuals of the obligation to maintain the confidentiality of this Agreement, and James accepts responsibility for any breach of confidentiality by a family member, attorney or advisor.
18. **Complete Agreement.** This Agreement constitutes a full and final resolution of all matters in any way related to James' employment with and separation from the City. This Agreement supersedes any and all other agreements between the parties, and the parties agree that no modification, change or amendment of this Agreement or any of its provisions shall be valid, unless in writing and signed by the party against whom such claimed modification, change or amendment is sought to be enforced.
19. **Titles.** The titles of the paragraphs of this Agreement are inserted merely for convenience and ease of reference and shall not affect or modify the meaning of any of the terms, covenants or conditions of the Agreement.
20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
21. **Voluntary Execution.** James acknowledges that he has read, considered, and fully understands this Agreement and all its terms, and executes it freely and voluntarily.
22. **Construction of Agreement.** Each party has had a full and complete opportunity to review this Agreement, and has been given the opportunity to have counsel review it.

Accordingly, the parties agree that the common law principles of construing ambiguities against the drafter shall have no application to this Agreement.

23. **No Representations.** James represents that in entering into this Agreement, he does not rely and has not relied upon any representation or statement made by the City or any of its employees or agents concerning this Agreement.
24. **No Re-Employment.** James agrees not to seek reemployment with the City of Edmonds in the future.
25. **Non-Disparagement.** James agrees not to discuss the existence of or provisions of this Agreement with the media or to make disparaging statements about the City relating to this Agreement or its provisions. This paragraph shall not in any way prohibit James from making truthful statements in a legal or administrative proceeding, or as otherwise required by law or legal process.

IN WITNESS WHEREOF, the parties have executed this Separation Agreement and Release as their free and voluntary act on the dates set forth below.

By:  Date: 5/18/20
N. Scott James

By:  Date: 5/27/20
Michael Nelson, Mayor
City of Edmonds