

## SEPARATION AGREEMENT

By and Between  
THE CITY OF YAKIMA  
And  
ANTHONY H. O'ROURKE

THIS SEPARATION AND RELEASE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Yakima City Manager Anthony H. O'Rourke (hereinafter referred to as "Employee") and the City of Yakima (hereinafter referred to as "Employer"). The consideration for this Agreement is the mutual undertakings set forth herein.

NOW, THEREFORE, Employer and Employee do hereby agree as follows:

- Resignation of Employee. By this Agreement Employee has submitted his resignation, which resignation is accepted immediately by Employer upon execution of this Separation Agreement, with the final day of employment pursuant to such resignation effective at midnight on December 31, 2015 (referred to in this Agreement as the "final day of employment"). The Parties mutually agree that Employee will cease to act in the role of City Manager effective December 1, 2015, shall return all City access cards and keys and shall remain available for consultation with the Interim City Manager and/or the City Council beginning on December 1, 2015 and continue in a consulting role until December 31, 2015. During the consultation period Employee shall be available upon request of the City Council or the Interim City Manager to provide information and advice in order to effect a smooth transition of City management during that period.
- Separation Benefits. There will be four (4) months of severance pay paid to Employee as specifically described in Section 4 below, in addition to regularly due employment wages and benefits paid to Employee for continued employment from the effective date of this Agreement through the final day of employment on December 31, 2015, as set forth in Section 3 below. Effective on December 1, 2015 Employee shall not receive any additional automobile allowance. Effective December 31, 2015 Employee shall not receive any cost associated with the use of a City-issued cell phone. Employee understands and agrees that the benefits as set forth in this Section 2, the compensation due as set forth in Section 3 below, and the severance payment as described more completely in Section 4 below, as well as the mutual covenants and conditions of this Agreement constitute sufficient consideration supporting all releases herein.
- Compensation Due. On the first regular City payday following the final day of employment, Employee shall be paid any regularly due compensation, accrued leave, and unused sick days payable to Employee in accordance with Employer's existing policies and procedures. Employee expressly acknowledges that he has no claims or entitlement to additional past or present pay or compensation from Employer, except as set forth herein, and he expressly waives claims for such additional compensation, pay or benefits not specifically set forth in this Agreement. Nothing in this Section or Agreement shall be construed to deny or limit Employee's rights to continuation of health coverage as authorized and provided in the Consolidated Omnibus Budget Reconciliation Act (COBRA).
- Additional Consideration. As additional consideration to which Employee would not otherwise be entitled, on the first regularly scheduled payday following the final day of

employment, Employer will make a lump sum severance payment to Employee of four (4) months of Employee's base salary. This lump sum severance payment shall be subject to normal payroll withholding taxes. Employee shall also be permitted to continue to receive all medical and life insurance benefits provided by the City for a period not to exceed four (4) months following the final day of employment set forth in Section 1 above, for which Employee will be invoiced monthly by the City from the final day of employment in the amount of the normal monthly payments for those benefits as he would have paid as an employee of the City. All medical and life insurance benefits provided by the City under this continuance of medical and life insurance coverage shall cease upon the expiration of the fourth (4<sup>th</sup>) month following the final day of employment or upon request by Employee for termination of the monthly payments for medical and life insurance coverage, whichever shall first occur.

5. Recommendation. The current Mayor of the City of Yakima agrees to provide Employee with a letter of recommendation if and at such time as a recommendation is requested by Employee.

6. No Pending Claims. Employee represents that he has no pending claims, lawsuits or charges filed against Employer with any court or governmental agency.

7. Waiver and Mutual Release of Claims. In consideration of the benefits, consideration and the additional severance consideration described above, and as a material inducement to the Employee and Employer to enter into this Agreement, Employer and Employee release any past and present claims against the other party. As referred to herein, "past and present claims" mean those claims arising on or before the date the "Acceptance of Agreement" on this Separation Agreement is signed by Employee. Employer waives and releases its past and present claims, if any, against the Employee related to his employment with Employer. Employee releases his past and present claims, if any, against the Employer, Employer's elected and appointed officials, employees and agents arising out of his employment with Employer, including but not limited to release of claims for individual relief in agency proceedings. The waiver and release of any claims by Employee referred to in this Separation Agreement and this Section 7 are subject to the limitations referred to in Section 8 below.

8. Limitations on Release of Claims. Nothing in this Agreement including but not limited to the release of claims and non-defamation provisions, prevents Employee from filing a charge or complaint with or from participating in an investigation or proceeding conducted by the EEOC, NLRB, or any other federal, state or local agency charged with the enforcement of any laws, although by signing this release Employee is waiving rights to individual relief based on claims asserted in such a charge or complaint, except where such a waiver of individual relief is prohibited.

9. Release and Counsel. Employee understands and acknowledges the significance and consequences of this Agreement and expressly confirms that it is to be given full force and effect according to each and all of its expressed terms and provisions. Employee acknowledges that he has been given full opportunity and has been encouraged to consult an attorney of his choice regarding this Agreement. Knowing and understanding so, the undersigned accepts the above sums in full settlement hereof.

10. Non-admission. This Agreement shall not be construed as an admission by Employer of any liability to Employee, breach of any agreement between Employer and Employee, or violation by Employer of any statute, law or regulation, nor shall it be construed as an admission of any misconduct or deficient performance or valid cause for termination of Employee.

11. Communications. It is the intention of the parties that Employee's separation be on an amicable basis. Employer and Employee mutually agree that they will not disparage the other Party hereto.

12. Breach and Enforcement. Employee and Employer agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which either party alleges a breach of this agreement.

13. Older Workers' Benefits Protection Act Provisions. In accordance with the requirements of the Older Workers' Benefits Protection Act, Employee expressly acknowledges the following:

- a. He has been advised by Employer to consult with an attorney prior to accepting this Agreement.
- b. He understands that he has twenty-one (21) days from the time in which he is first presented with this Agreement to consider whether or not to accept it. He also understands that while it is his right to decide to accept, enter into, and execute the Agreement before the end of that 21-day period, that he is under no obligation to do so. For purposes of calculating this period, Employer and Employee acknowledge that Employee was first presented with this Separation Agreement on November 6, 2015 and that the twenty-one (21) day period expires November 27, 2015. Employee also understands that by returning the signed Agreement prior to November 27, 2015, he has KNOWINGLY AND VOLUNTARILY WAIVED ANY RIGHT TO THE STATUTORILY PRESCRIBED WAITING PERIOD AND HAS ACCEPTED THE SHORTENING OF THE STATUTORILY PRESCRIBED WAITING PERIOD, AND THAT THE DECISION TO DO SO WAS NOT INDUCED THROUGH FRAUD, MISREPRESENTATION, OR THREAT TO WITHDRAW OR ALTER THE OFFER HEREIN PRIOR TO THE EXPIRATION OF THE 21-DAY TIME PERIOD.
- c. Employee also understands that for a period of seven (7) days following the execution of this Agreement, he may revoke the Agreement. He further understands that if he does not revoke the Agreement within the 7-day period, this Agreement will be enforceable seven days after the date of acceptance.

14. Complete Agreement. This Agreement represents and contains the entire understanding between the parties in connection with the subject matter of this Agreement. The Agreement shall not be altered or varied except in a writing signed by Employee and Employer. It is expressly acknowledged and recognized by all parties that there are no oral or written collateral agreements, understandings or representations between the parties other than as contained in this document, and any such prior agreements are specifically

terminated. Paragraph headings utilized in this Agreement are for reference convenience only and have no independent meaning.

15. Governing Law. Unless otherwise controlled by federal law, the interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington.

16. Reliance and Right to Consult with an Attorney. Employee represents and acknowledges that in executing this Agreement, he does not rely and has not relied upon any representation or statement not set forth herein made by Employer or by any of the Employer's employees, agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise. Employee understands that he has the right to consult with an attorney.

### ACKNOWLEDGEMENT OF RECEIPT

This Agreement was given to me on the date next to my signature:

\_\_\_\_\_  
Anthony H. O'Rourke

\_\_\_\_\_  
Date

PLEASE READ CAREFULLY. THIS IS A VOLUNTARY SEPARATION AND RELEASE AGREEMENT.

### ACCEPTANCE OF AGREEMENT

I have accepted and agree to this Agreement as of the date next to my signature.

EMPLOYEE:

\_\_\_\_\_  
Anthony H. O'Rourke

\_\_\_\_\_  
Date

EMPLOYER:  
**CITY OF YAKIMA**

\_\_\_\_\_  
Micah Cawley, Mayor

\_\_\_\_\_  
Date