

SEPARATION AGREEMENT AND
GENERAL RELEASE OF CLAIMS

This Separation Agreement and Full Release ("Separation Agreement") is made and entered into by Dan Weinheimer ("Employee") and the City of Newberg (the "City"). Collectively, Employee and the Company are referred to herein as "the Parties."

I. RECITALS.

- A. Separation Date.** Employee was employed by the City from approximately February 24, 2020 until October 29, 2021 ("Separation Date"). Employee stated his verbal intent to resign on October 19, 2021, and submitted his written letter of resignation on October 21, 2021.


- B. Limitation on Execution Date.** This Separation Agreement may be presented to Employee prior to Employee's actual Separation Date with the City. Nevertheless, as a condition of the enforceability of this Agreement, including Employee's eligibility to receive the Severance Sum outlined below, Employee must sign this Separation Agreement on or after Employee's Separation Date. Should Employee opt to execute this Separation Agreement prior to Employee's last day of employment, Employee will need to re-execute the document in order to receive any severance payment.

II. CONSIDERATION. In consideration for signing this Separation Agreement and complying with its terms, and provided Employee does not subsequently revoke this Separation Agreement within the allotted time, the City agrees to provide Employee with the following severance benefits:

A. Severance Sum

- 1.** The City will pay Employee the equivalent of twelve (12) months' salary for a total of \$164,000.00 (ONE HUNDRED AND SIXTY FOUR THOUSAND DOLLARS AND 00/100) (the "Severance Payment");

- 2.** The City will pay Employee an additional severance in the amount of \$7,500.00 (SEVEN THOUSAND FIVE HUNDRED DOLLARS AND 00/100) (the "Additional Severance Payment");

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3. The City will pay Employee all accrued and unused sick leave (378.58 hours with a value of \$29,847.25), vacation leave (279.88 hours with a value of \$22,065.74), and paid holidays (104 hours with a value of \$8,199.36), as of Employee's final date of employment (the "Vacation Payout") for a total of \$60,112.35 (SIXTY THOUSAND ONE HUNDRED TWELVE DOLLARS AND 35/100);
4. Conditioned upon Employee timely electing Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the City will pay directly to its COBRA administrator up to 12 months' of the Employee's COBRA cost for health insurance and any administrative fees (that is, from November 1, 2021 through October 31, 2022) (the "COBRA Premium");

If Employee elects insurance coverage or otherwise becomes ineligible for COBRA benefits before October 31, 2022, the City will owe no further payments related to its COBRA Premium obligations under this Separation Agreement;

If, after October 31, 2022, Employee chooses to continue COBRA, the City will contribute no further payment towards continuation of any COBRA coverage of Employee other than stated above, and Employee will receive no additional payment other than the payment described above; and

5. The City will pay Employee \$6,221.37 (SIX THOUSAND TWO HUNDRED AND TWENTY-ONE DOLLARS AND 37/100) (the "Other Premiums Payment"), which is the sum of (a) 12 months' of premium payments for life insurance (\$134.48 per month totaling \$1,613.76 annually), short-term disability insurance (\$160.16 per month totaling \$1,921.92 annually), and long-term disability insurance (\$54.16 per month totaling \$649.92 annually) and (b) federal, state, and local payroll taxes the City typically deducts. The Severance Payment, Additional Severance Payment, Vacation Payout, COBRA Premium, and Other Premiums Payment will be referred to collectively as the "Severance Sum."

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B. Timeline for Payment of Severance Sum

1. The City will provide the Employee's COBRA Premium as outlined in Section II.A.4, above; and
2. The City will provide the Severance Payment, Additional Severance Payment, Vacation Payout, and Other Premiums Payment according to the following schedule: The City will pay Employee the sum of the Severance Payment, Additional Severance Payment, Vacation Payout, and Other Premiums Payment in two (2) installments, with the first installment (20% of the Severance Payment, Additional Severance Payment, Vacation Payout, and Other Premiums Payment) occurring within fifteen (15) business days after receiving an original of this Separation Agreement signed by Employee on or after Employee's Separation Date, and following the expiration of the seven (7) day revocation period without Employee's revocation of this Separation Agreement. The second payment (the remaining 80% of the Severance Payment, Additional Severance Payment, Vacation Payout, and Other Premiums Payment) will occur no later than January 31, 2022.

C. Tax Responsibility. The City will withhold all applicable federal, state, and local taxes from the Severance Sum. Notwithstanding such withholding, Employee acknowledges it is his responsibility to pay any further taxes, interest, and penalties that may be imposed with respect to the severance benefits contemplated by this Separation Agreement.

III. MUTUAL RELEASE OF CLAIMS.

- A. Employee's Release of Claims.** In consideration for payment of the Severance Sum as set forth in Section II above, Employee knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, the City (including, without limitation, all departments, agencies, subdivisions, officers, elected officials, agents, supervisors, directors, managers, employees or representatives, and all other related legal persons or entities not named herein, collectively referred to as "Releasees") from any and all known or unknown claims, expenses, injuries, losses, rights of contribution or indemnity, as well as any other statutory rights, attorneys' fees and damages, without limitation, which now exist or may ever develop, which are in any way connected with, based upon, or arise out of Employee's employment with the City up to and including

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the date of this release. This release includes but is not limited to claims for wages, money, damages, attorneys' fees, emotional distress, stress, discrimination, physical injuries, bodily injury, medical expenses, and reinstatement to employment. This release also includes any claims arising under any Oregon or federal statutes pertaining to wages, conditions of employment, wrongful discharge, retaliation, or discrimination in employment, and including any claim under Oregon Revised Statutes Chapters 652, 653, 654, 659 and 659A; Title VII of the Civil Rights Act of 1964; the Post Civil War Acts (42 USC §§ 1981-1988); the Age Discrimination in Employment Act; the Americans with Disabilities Act; the Family Medical Leave Act; the Equal Pay Act of 1963; the Fair Labor Standards Act; the Occupational Safety and Health Act; the Older Workers Benefit Protection Act; any regulations under or amendments of such authorities; and any applicable contract, tort, or other common law or statutory law theories. By this release Employee does not waive any claim for indemnification from the City that Employee may have under the Oregon Tort Claims Act (ORS 30.260 to 30.300) or his employment agreement.

Employee and the City expressly intend this waiver and release to reach to the maximum extent permitted by law. The parties understand that this release means Employee cannot institute any action at law, suit or proceeding of any kind or nature whatsoever in a court of law against the City or any Releasee, except for enforcement of this Separation Agreement regardless of whether such claims are raised through a complaint, counterclaim, defense or cross-claim. Employee further agrees to not make any claim or demand for money against the City or any Releasee. Employee understands and agrees that this Separation Agreement constitutes a full and final compromise, satisfaction and settlement of all claims and rights he may have against the City, in any way connected with, based upon, or arising out of his employment with and departure from the City up to and including the date he signs this Separation Agreement. Employee understands and agrees that in the event he initiates any lawsuit in a court of law against the City or any Releasee in breach of this Separation Agreement, he will be held liable for the City's reasonable attorneys' fees incurred in defending such action.

- B.** The City's Release of Claims. To the extent insurance coverage is available, the City, its elected officials, agents, successors, assigns and representatives, hereby release and forever discharge, Employee, his successors, assigns, and

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representatives, of any and all claims, complaints, actions, damages and expenses of whatever nature, and demands of any kind, including those based in statute, contract, or tort, up to and including the date of execution of this Separation Agreement, whether known or unknown, foreseen or unforeseen, asserted or unasserted. By this release the City does not waive any right to refuse to indemnify Employee or seek indemnity from Employee for liability arising from action that the Employee is determined to have taken outside of the course and scope of his employment with the City under the Oregon Tort Claims Act (ORS 30.260 to 30.300).

- C. Claims Not Released. Despite the general release set forth above, through this Separation Agreement Employee is not waiving any rights Employee may have to: (a) Employee's own vested accrued employee benefits under the Company's health, welfare, or retirement benefit plans as of the Separation Date; (b) benefits and/or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes; (c) pursue claims which by law cannot be waived by signing this Separation Agreement; (d) enforce this Separation Agreement; and/or (e) challenge the validity of this Separation Agreement.

IV. AFFIRMATIONS.

- A. Employee acknowledges that, except as expressly provided in this Separation Agreement, Employee will not receive any additional compensation, benefits or separation pay after the Separation Date. Thus, for any employee benefits sponsored by the City not specifically referenced in this Separation Agreement, Employee will be treated as a terminated employee effective on the Separation Date.
- B. Employee affirms that he has not filed or caused to be filed any claim, complaint or action against the City or any Releasee in any forum or form.
- C. Employee further affirms that he has not been retaliated against for reporting any allegations of wrongdoing by the Company or its officers, including any allegations of corporate fraud.
- D. Employee acknowledges and affirms that he is not authorized to waive attorney-client privilege on behalf of the City.



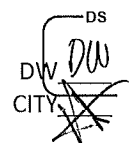
Handwritten signature and initials DW, CITY, and DS.

- E. Except as otherwise specifically provided in this Separation Agreement, Employee affirms that he has received all leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits to which he may be entitled from the City and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to you with the exception of any vested right you may have under the terms of a written ERISA-qualified benefit plan. Employee furthermore affirms that he has no known workplace injuries or occupational diseases that have not already been disclosed to the City and that he has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act, Oregon Family Leave Act, Oregon Sick Time, or any other applicable federal, state, or local law, by the City.
- F. The parties acknowledge, warrant, represent, and agree that they: (a) signed this agreement freely, knowingly, and voluntarily; (b) had an opportunity to and did discuss this agreement's terms and the implications thereof with legal counsel; and (c) are fully aware of the contents and effect of the terms of this Separation Agreement. The parties agree that this Separation Agreement is not the result of any fraud, duress, mistake, or undue influence whatsoever.

V. NON-DISPARAGEMENT.

- A. Non-Disparagement. Pursuant to the Oregon Workplace Fairness Act ("OWFA"), Employee voluntarily requests that a non-disparagement provision be included as part of this Separation Agreement. The Parties agree that they wish to end their relationship and part company in an amicable manner. Accordingly, Employee will announce his resignation to City employees prior to his Separation Date. If the City receives a reference request from a prospective employer of Employee, the City will disclose only Employee's dates of employment, that he resigned, and the position held with the City. If any current member of the City Council (as of the date of execution of this Separation Agreement) receives an inquiry regarding Employee's departure, that councilor will say that Employee resigned because he wished to explore other opportunities. If Employee receives an inquiry regarding his departure, Employee will say that he made the decision to resign in order to explore other opportunities

Except as otherwise permitted under paragraph III.B or as otherwise required by law, Employee agrees to not disparage, criticize, or demean the City, its work, services, or personnel to any third party or through any media, social media

A handwritten signature in dark ink is written over a rectangular stamp. The stamp contains the text "DS" at the top, "DW" in the middle, and "CITY" at the bottom. The signature is written in a cursive style and extends across the stamp.

platform, or other publication. In addition, except as otherwise required by law, the current members of the City Council agree as of the Separation Date not to disparage, criticize, or demean Employee or his work or services to any party outside the City or through any public media, social media platform, or other publication. Nothing in this Separation Agreement shall be construed to limit any person's ability to communicate with any Government Agencies regarding a potential violation of federal or state laws or regulations, to comply with applicable public records or public meetings laws, or to testify in response to a lawfully issued subpoena.

- VI. CONTINUING DUTY TO COOPERATE.** Employee agrees to cooperate with the City in the defense of third-party legal claims or administrative charges that concern events that occurred during Employee's tenure at the City. Employee agrees to make himself reasonably available after the Separation Date to assist the City in defense of those claims or charges. To the extent permitted by law, the City will reimburse Employee for any documented out-of-pocket expenses reasonably incurred by Employee in complying with this Section. Employee's cooperation may include, but is not limited to, (1) meeting with the City's attorneys by telephone or in person at mutually convenient times and places in order to provide Employee's knowledge of the City's procedures and practices, the matters at issue and Employee's recollection of events in litigation involving the City, and (2) appearing at the City's request and, to the extent possible, at a mutually convenient time, as a witness at depositions or trials, without necessity of subpoena, to truthfully provide Employee's knowledge of the City's procedures and practices, the matters at issue and Employee's recollection of events of which Employee has knowledge.
- VII. RETURN OF CITY PROPERTY.** Within ten (10) days of the Separation Date, Employee agrees to return to the City all hard copy and electronic documents (and all copies thereof) and other City property that Employee has in his possession, including, but not limited to tangible property, computer and/or laptop and associated equipment, electronic files, keys, and entry cards. Employee further represents and warrants that to the best of his knowledge Employee has not retained copies, electronic or otherwise, of such property. If Employee discovers additional City property in his possession in the future, Employee shall promptly return it.
- VIII. NON-ADMISSION OF WRONGDOING.** The Parties agree that neither this Separation Agreement nor the furnishing of the Severance Sum shall be deemed or construed at

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any time for any purpose as an admission by the City or Employee of any liability or unlawful conduct of any kind. The City and Employee expressly deny any such liability.

IX. GOVERNING LAW AND INTERPRETATION.

A. This Separation Agreement shall be governed and conformed in accordance with the laws of the State of Oregon. Should any provision of this Separation Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision immediately shall become null and void, leaving the remainder of this Separation Agreement in full force and effect.

B. All disputes arising from the interpretation, breach, performance, nonperformance, or exercise of rights or remedies of this Separation Agreement shall be submitted to mediation with the use of a mutually agreeable mediator prior to either party seeking relief in a court. However, this section does not waive either party's right to seek injunctive relief. However, the Party instituting such an action must take steps to file this Separation Agreement or any documents setting forth the terms of this Agreement with the court under seal. In an action to enforce any term or terms of this Severance Separation Agreement or to seek damages for breach of this Separation Agreement, the prevailing party in that action shall be entitled to recover reasonable attorney's fees and costs.

X. ENTIRE AGREEMENT. This Separation Agreement sets forth the entire agreement between the Parties hereto regarding the matters discussed herein, and fully supersedes any prior agreements or understandings between the Parties hereto regarding the matters discussed herein. Employee acknowledges that he has not relied on any representations, promises, or agreements of any kind made to you in connection with your decision to accept this Separation Agreement, except for those set forth in this Separation Agreement.

XI. MISCELLANEOUS.


A. This Separation Agreement may be signed in counterparts, all of which shall be deemed an original and taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Separation

Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

- B. The section headings used in this Separation Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.
- C. This Separation Agreement was the result of negotiations between the Parties. In the event of vagueness, ambiguity or uncertainty, this Separation Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.
- D. If Employee or the City fails to enforce this Separation Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Agreement. The Separation Agreement will remain in full force and effect.
- E. This Separation Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Separation Agreement.
- F. The provisions of this Separation Agreement are severable; if any provision of this Separation Agreement is held invalid or unenforceable, the Separation Agreement shall be enforced to the maximum extent permissible and the remaining terms of the Separation Agreement shall remain in full force and effect.

XII. COMPLIANCE WITH OLDER WORKERS' BENEFITS PROTECTION ACT ("OWBPA")

- A. Employee understands that he would not receive the Severance Sum discussed in this Agreement without Employee's release of claims, including those under the Age Discrimination in Employment Act ("ADEA").
- B. Employee is advised that he has up to twenty-one (21) calendar days to consider and accept the terms of this Separation Agreement by fully executing it below, and returning it to City Attorney James Walker at james.walker@newbergoregon.gov. Employee is also advised to consult with an attorney prior to signing this Separation Agreement.

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- C. Employee agrees that any modifications, material or otherwise, made to this Separation Agreement, will not restart or affect in any manner the original up to twenty-one (21) calendar day consideration period.

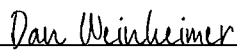
XIII. REVOCATION PERIOD UNDER THE OWBPA AND OWFA.

- A. Employee may revoke this Separation Agreement for a period of seven (7) calendar days following the date Employee sign this Separation Agreement. Any revocation within this period must be submitted, via email, to James Walker at james.walker@newbergoregon.gov and state, "I hereby revoke my acceptance of our Severance Agreement." The revocation must be emailed to James Walker within seven (7) calendar days after Employee signs this Separation Agreement.
- B. This Separation Agreement shall not become effective or enforceable until the revocation period has expired. If the last day of the revocation period is a Saturday, Sunday, or legal holiday, then the revocation period shall not expire until the following day that is not a Saturday, Sunday, or legal holiday. The **Effective Date** of this Agreement shall be the eighth day following the date that Employee signs this Severance Agreement and a copy of the same is received by the City.

EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SEVERANCE AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST THE CITY OF NEWBERG OR ANY RELEASEE.

IN WITNESS WHEREOF, the Parties have read the foregoing Separation Agreement and hereto knowingly and voluntarily executed this Separation Agreement with full understanding of its consequences.

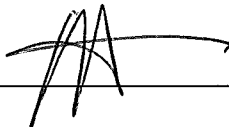
EMPLOYEE DAN WEINHEIMER

DocuSigned by:


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DATE 11/5/2021

EMPLOYER CITY OF NEWBERG

BY 

TITLE: Mayor Rick Rogers DATE 11/9/2021

