

**SEPARATION AGREEMENT AND GENERAL RELEASE
BETWEEN
MICHAEL CIARAVINO AND CITY OF MILL CREEK**

This Separation Agreement and General Release ("Agreement") is between Michael Ciaravino ("Manager") and the City of Mill Creek (the "City") (collectively, the "Parties").

Manager has been employed by the City since May 6, 2019 as its City Manager pursuant to the Professional Services Agreement dated April 9, 2019, which was amended in September 2020 to provide for additional personal leave (the "Employment Agreement").

Manager is resigning his position with the City for critical family medical reasons. The City is grateful for Manager's dedicated service for the past two and a half years. During that time, Manager helped the City through a challenging financial reorganization and complex litigation, and chart its course during an unprecedented global pandemic. The City further appreciates Manager's willingness to assist the City in transitioning matters after his resignation.

Both Manager and the City desire to resolve all matters, known or unknown, arising out of Manager's employment and separation from the City according to the terms, conditions and consideration included in this Agreement.

This Agreement is dated November 11, 2021 for reference purposes, which is the date that the City delivered this Agreement to Manager for consideration.

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

Article 1. The City's Obligations

1.1 Separation Date. Manager is resigning his employment with the City, effective November 16, 2021 (the "Separation Date").

1.2 Personnel File. Manager's Personnel File will reflect "voluntary separation" as the reason for separation from employment.

1.3 Payment of Regular Wages and Accrued Annual Leave and Compensatory Time. Whether Manager signs this Agreement or not, the City will pay Manager's regular wages through the Separation Date, plus any accrued but unused administrative leave and compensatory time, less all lawful and authorized deductions and withholding.

1.4 Reimbursement of Business Expenses. If Manager has incurred any reimbursable business expenses and submits an expense report no later than ten (10) days after the Separation Date, the City will pay any reimbursable expenses in accordance with the City's policies no later than thirty (30) days after the Separation Date.

1.5 Consideration. In consideration for Manager's signature on this Agreement, the City agrees to provide the following, which shall collectively be "Consideration":

(a) Ninety-One Thousand Six Hundred Fifty One Dollars and 20/100 (\$91,651.20), equivalent to six (6) months of Manager's regular compensation ("Severance Pay"); and

(b) Fifteen Thousand Nine Hundred Thirty Nine and 08/100 dollars (\$15,939.08), equivalent to the cost of continuing Manager's medical insurance coverages for himself and his dependents under Consolidated Omnibus Budget Reconciliation Act ("COBRA") for a consecutive six (6) month period ("COBRA Costs").

Manager acknowledges that but for his agreement to the terms of this Agreement, he would not otherwise be entitled to the Consideration set forth in this Section 1.5. Manager acknowledges that this Consideration is reasonable and just compensation for the claims released in this Agreement, and that all amounts payable above are gross payments, and shall be subject to lawful and authorized deductions. So long as Manager fully complies with his obligations under this Agreement, the Consideration payable under this Section 1.5 shall be paid to Manager via direct deposit in two installments: (a) the first installment representing 1.5 months of Manager's salary and 1.5 months of COBRA costs shall be payable on the first regular payroll date following this Agreement's Effective Date (defined below), and (b) the second installment representing the remaining 4.5 months of Manager's salary and 4.5 months of COBRA costs shall be payable on the first payroll date in 2022.

1.6 COBRA Continuation Coverage. Manager's participation in the City's group health insurance plan will terminate on the last day of the month in which the Separation Date fell. If Employee is eligible under relevant law and the terms of the City's group health insurance plan, coverage thereafter will be made available to Manager and his eligible dependents pursuant to current federal law (COBRA). Following separation, information will be provided to Manager regarding this coverage.

1.7 Termination of Benefits. Manager's participation in all other benefit plans and programs ended or will end on the first day of the month following the Separation Date, if so provided in the applicable benefit plan or program. Manager's rights under any benefit plans in which he may have participated will be determined in accordance with the written plan documents governing those plans.

Article 2. Manager's Obligations

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

2.2 No Additional Compensation or Benefits. Manager acknowledges that the payments in Section 1.3, together with the payments Manager has already received, represent full payment of all compensation of any kind (including wages, vacation, sick leave, and bonuses) earned as a result of employment with the City. Manager acknowledges that he must submit an expense report no later than ten (10) calendar days after the Separation Date to obtain reimbursement for any reimbursable business expenses, but that if he fails to do so, such expenses will not be reimbursed. Manager further acknowledges that he will have the right to any vested benefits, but that he 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 Forfeiture of Consideration. If Manager breaches any obligations under this Agreement, including specifically Manager's obligations under Article 2, Manager understands that Manager will forfeit and shall not be entitled to any unpaid Consideration that the City might otherwise be obligated to pay under Section 1.5 above.

2.4 Agreement Confidentiality. As further specific consideration, Manager agrees that the terms of this Agreement are intended to be confidential between the Parties. Except in response to a lawful subpoena, court order, public records request, or governmental administrative request, or as otherwise permitted by law, Manager will not discuss the terms of this Agreement with any third party, including, but not limited to, any current or former employee of the City. The sole exceptions are that Manager may discuss the terms of this Agreement with his immediate family members (spouse or registered domestic partner, sibling or parent), attorney(s), or financial advisor(s), so long as Manager advises them that he is bound by a strict confidentiality clause and that their disclosure shall constitute a

breach of his obligations.

2.5 References. Manager agrees to instruct all prospective employers to direct requests for references to the Mayor. However, Manager agrees and acknowledges that the City may state that its policy is to provide only dates of employment, current or last position held, and with appropriate written authorization from Manager, current or last compensation level. Manager hereby consents to the release of that information, including current or last compensation level.

2.6 Return of Property. On the Separation Date or upon the City's determination that transition services outlined in Section 2.7 have been completed, Manager agrees to deliver to the Mayor all City property within his possession, including keys, keycards, cell phones, laptop computers, documents, computer discs, software, source codes, code words, systems, books, manuals, reports, contracts, lists and any records or recordings of any nature whatsoever, whether on paper, in electronic form, in auditory form, or otherwise. If Manager comes into possession or control of any additional property, he shall immediately provide it to the City.

2.7 Transition Services; Cooperation; Preservation of Privilege. If the City requests Manager's assistance with the transition of City work, the City agrees to pay all reasonable out of pocket expenses incurred by Manager in providing such assistance and to compensate him for his approved hours assisting the City on an hourly basis equivalent to his salary on the Separation Date. Manager agrees that he will also continue to respect and preserve the attorney-client privilege and work product doctrine as to those legal matters to which he was privy during employment. Manager agrees to cooperate with the City and make himself or reasonably available to the City and its counsel in connection with the prosecution or defense of any pending projects, third-party claims, litigation or related matters affecting the City as to which he has relevant knowledge. Manager agrees to assist in the prosecution or defense of any such claims, litigation or related matters by reasonably cooperating with the City and its counsel in preparation and execution of sworn declarations, appearing voluntarily, and testifying truthfully in declarations, depositions, and at trial.

2.8 Non-Disparagement. As further specific consideration for the City's obligations to Manager under the terms of this Agreement, Manager agrees not to make any disparaging statements before or after separation from employment, either written or verbal, to any third party, including any member of the media, or to the City's current or former employees regarding the City, its services, practices, or employees. This provision is not intended, however, to prevent Manager from making reports to any governmental agency or truthfully responding to any subpoena, court order, or governmental agency request.

2.9 Injunctive Relief. Manager agrees that in the event he materially breaches any of the provisions in Article 2, damages would be difficult, if not impossible, to ascertain. Manager 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 this 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.

2.10 Waiver and Release.

(a) Manager hereby releases and forever discharges any and all of the "Released Parties" (defined below) from any and all claims of any kind, known or unknown, that arose on or before the date that he signed this Agreement to the fullest extent allowed by law, including, without limitation, claims for:

- wrongful termination or constructive discharge, including claims based on violation of public policy or an implied covenant of good faith and fair dealing; promissory estoppel or detrimental reliance; breach of fiduciary duty; breach of agreements, representations, policies or practices related to Manager's relationship with any Released Party or based on any legal obligation owed by any Released Party;
- tortious interference with contract or prospective business; fraud or negligent misrepresentation; invasion of privacy, defamation or libel; personal injury or sickness or any other harm; intentional or negligent infliction of emotional distress; nonphysical injury; false imprisonment;
- violation of federal or state laws governing requests for and release of public records;
- violation of federal, state, or local laws, ordinances, or executive orders prohibiting discrimination, harassment or retaliation, or requiring accommodation, on the basis of any legally protected characteristic or activity, including, but not limited to, race, ancestry, creed, color, religion, national origin, ancestry, pregnancy, childbirth or related medical conditions, parenthood, families with children, sex, marital status, genetic information, sexual orientation, gender expression or gender identity, political ideology, age, honorably discharged veteran or military status, sensory, physical, or mental impairment, criminal convictions, or other legally protected characteristics or activities;
- violation of federal, state, or local laws or ordinances requiring leave, paid or unpaid, on any ground or prohibiting interference or retaliation for exercising any such rights;
- violation of federal, state, or local laws, ordinances or executive orders governing employment practices; wages, notice of wages, payment of wages, pay equity, or theft of wages; scheduling, including shifts, meal breaks and rest periods; polygraphs; privacy including electronic privacy or communications; safety or health; consumer or credit reporting; labor relations or unfair labor practices; immigration; or retaliation or interference with any protected rights or characteristics;
- violation of federal, state or local laws, ordinances or executive orders requiring notice of plant closures, layoffs or reductions in the workforce;
- compensation of any kind whatsoever, including, but not limited to, claims for salary, wages, overtime, bonuses, commissions, incentive compensation, severance, sick or other leave, vacation, or other paid time off;
- benefits of any kind whatsoever, including, but not limited to, retirement, welfare and fringe benefits;
- monetary or equitable relief, including, but not limited to, damages, back pay, front pay, reinstatement, medical fees or expenses, experts' expenses, attorney's fees, costs, debts, or disbursements;
- violation of the **Age Discrimination in Employment Act of 1967 (ADEA)**; the **Older Workers Benefit Protection Act (OWBPA)**; and
- violations of all similar federal, state and local laws, to the fullest extent permitted by law.

(b) This Agreement does not release any claims or rights which as a matter of law cannot be waived, nor does this Agreement affect Manager's rights, if any, to receive unemployment compensation, workers' compensation benefits, or vested benefits, such as those under a pension plan or employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (also known as ERISA).

(c) Nothing in this Agreement prohibits Manager from reporting potential violations of the law or filing a charge or complaint with an appropriate governmental agency. Nor is this Agreement intended to preclude Manager from recovering any bounties or other rewards offered by the government or available under the law. Manager does not need prior authorization of any kind to make any such reports or disclosures, and Manager is not required to notify the City that he has made such reports or disclosures. However, Manager agrees that he is not entitled to and will not accept any monetary recovery directly from the City as a result of filing any such report, disclosure, charge, or complaint. Except as may be required by subpoena, court order, or other force of law, Manager agrees not to assist any individual or entity in commencing or prosecuting any action or proceeding against any Released Party connected to any and all matters arising from any event that has occurred up to the date that Manager signed this Agreement.

(d) "Released Party" or "Released Parties" means the City of Mill Creek, any partnerships or joint ventures of such entity; the benefit plans of each such entity; and with respect to each such entity, all past, present and future employees, managers, supervisors, fiduciaries, elected officials, council members, trustees, officers, representatives, agents, contractors, insurers, attorneys, successors, and assigns, whether acting in their individual or official capacities, and any other persons acting by, 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.

(e) Manager understands that he is releasing potentially unknown claims, and that Manager has limited knowledge with respect to some of the claims being released. Manager acknowledges that there is a risk that, after signing this Agreement, he may learn information that might have affected Manager's decision to enter into this Agreement. Manager assumes this risk and all other risks of any mistake in entering into this Agreement. Manager acknowledges that this Agreement and the release and discharge contained herein is fairly and knowingly made. Manager is giving up all rights and claims of any kind, known or unknown, except for the rights specifically given in this Agreement.

2.11 Indemnification. Manager agrees to indemnify and hold Released Parties harmless from and against all losses, costs, damages or expenses, including, without limitation, reasonable attorney's fees incurred, arising out of a breach of Paragraph 2.10 of this Agreement. As a material part of this Agreement, Manager represents and warrants that there are presently no claims or potential claims that are capable of being asserted against the Released Parties which he has not asserted or which could be asserted on his behalf or on behalf of his marital community or registered domestic partnership.

2.12 Affirmations.

(a) Manager understands that the City may deduct lawful and authorized deductions and withholdings, including federal and any state taxes, from payments made under this Agreement. The City makes no representations as to the tax consequences to Manager. Manager acknowledges that he had adequate time to consult a financial advisor or accountant before signing this Agreement.

(b) Manager affirms that he has disclosed any workplace injuries or occupational diseases and has been provided and/or has not been denied any leave or accommodation requested under federal, state, or local laws, including family or medical leave, paid sick or safe leave, military leave, or any other leave mandated by law.

Article 3. Older Workers' Benefit Protection Act Provisions

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

3.1 Independent Legal Counsel. Manager is advised and encouraged to consult with an

attorney before signing this Agreement. Manager acknowledges that, if he desired to consult an attorney, he had an adequate opportunity to do so.

3.2 Consideration Period. Manager has twenty-one (21) calendar days from the date the original Agreement was given to him on November 11, 2021 to consider this Agreement before signing it ("Consideration Period"). Manager agrees that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the original twenty-one (21) calendar day consideration period. Manager may use as much or as little of this twenty-one (21) day period as he wishes before signing. The Consideration Period expires on December 2, 2021. If Manager does not sign and return this Agreement within the Consideration Period, it will not become effective or enforceable, and Manager will not receive the benefits described in this Agreement.

3.3 Revocation Period and Effective Date. Manager has seven (7) calendar days after signing this Agreement to revoke it. To revoke this Agreement after signing it, Manager must deliver a written notice of revocation to the Mayor before the seven (7) day period expires. This Agreement shall not become effective until the eighth (8th) calendar day after Manager signs it ("Effective Date"). If Manager revokes this Agreement, it will not become effective or enforceable, and he will not receive the benefits described in this Agreement.

3.4 Acceptance. Manager agrees and accepts this Agreement. Manager acknowledges that he has not signed this Agreement relying on anything not set out herein. Manager acknowledges that if he is signing this before the Consideration Period expires, he has decided not to wait for the full twenty-one (21) day period, even though he has the right to do so.

Article 4. General Provisions

4.1 Non-Admission. This Agreement shall not be construed as an admission by Manager 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.

4.2 Governing Law. This Agreement is governed by the laws of the State of Washington, without giving effect to the rules governing the conflicts of laws, and without the aid of any canon, custom, or rule of law requiring construction against the drafter.

4.3 Successors and Assigns. Manager's obligations will bind his heirs, successors, and assigns, to the benefit of the City. The City shall have the right to assign this Agreement to any of the City's successors, assigns, or affiliates or to any entity that, directly or indirectly, is in control of, is controlled by, or is under common control with the City. This Agreement shall be binding upon the successors and permitted assigns of the City.

4.4 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.

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

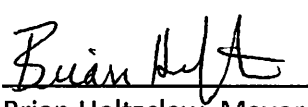

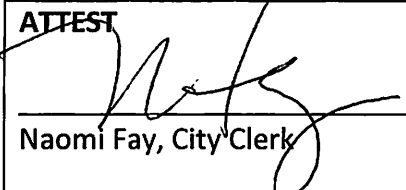
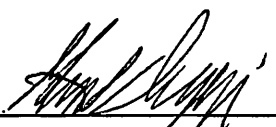
4.6 Severability. It is further understood and agreed that if any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable.

4.7 Complete Agreement. This Agreement represents and contains the entire understanding between the Parties in connection with the subject matter of this Agreement. As further specific consideration for the Parties' signatures on this agreement, the Parties recognize and agree that this

Agreement supersedes and terminates the Employment Agreement. 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. Any modifications to this Agreement must be in writing and signed by both Parties to be effective.

4.8 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. An e-mailed or facsimile copy of the signature may be submitted as proof of execution; however, Manager shall send the original executed agreement by U.S. Mail to the Mayor no later than three (3) days after signature.

This Agreement consists of 7 pages.

CITY OF MILL CREEK  _____ Brian Holtzclaw, Mayor Date 11/16/21	MANAGER  _____ Michael G. Ciaravino Date 11/16/21
ATTEST  _____ Naomi Fay, City Clerk APPROVED AS TO FORM OFFICE OF THE CITY ATTORNEY  _____ Grant Degginger, City Attorney	

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