

RESOLUTION NO. 1322

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, AUTHORIZING THE MAYOR PRO-TEMPORE TO EXECUTE A SEPARATION PACKAGE AGREEMENT WITH KAREN SCHARER

WHEREAS, Karen Scharer's employment with the City of Dayton ended on July 31, 2017; and

WHEREAS, the City offered Ms. Scharer a Separation Package Agreement to facilitate her transition out of City employment and ensure that any disputes of any kind are resolved amicably; and

WHEREAS, Ms. Scharer agreed with the Separation Package Agreement and its terms on August 14, 2017.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. That the Mayor Pro-Tempore is hereby authorized to execute on behalf of the City of Dayton the Separation Package Agreement in the form attached hereto as Exhibit "A."

Section 2. That the Mayor Pro-Tempore is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. That this resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and signed this 30TH day of August, 2017.

CITY OF DAYTON



Dain Nysae, Mayor Pro-Tempore

Attest:



Trina Cole, City Clerk-Treasurer

SEPARATION PACKAGE AGREEMENT

This Separation Package Agreement ("Agreement") is made between Karen Scharer ("Scharer") and the City of Dayton, Washington ("the City"), a municipal corporation.

Background and Purpose: Scharer's employment with the City ended on July 31, 2017 and the City has provided Scharer with her final paycheck, including all wages and unused vacation benefits earned through July 31, 2017. Even though Scharer's employment has ended, the City has offered Scharer this Separation Package Agreement to facilitate her transition out of City employment and ensure that any and all disputes of any kind are resolved amicably.

Therefore, the terms of the Agreement are as follows:

1. Agreement Benefits Scharer Will Receive: In exchange for Scharer's promises, waivers and releases of claims in this Agreement:
 - a. The City will pay Scharer the sum of five thousand, seven hundred and thirty-three dollars and eighty cents (\$5,733.80), less applicable withholding and authorized deductions, an amount intended to be approximately equivalent to one month of Scharer's regular base pay during her employment.
 - b. The City will pay 100% of the cost of the premium to continue Scharer's current medical/dental insurance benefits through COBRA continuation coverage through September 30, 2017 at her currently elected benefit levels. Scharer understands and agrees that she must timely elect such COBRA benefits and that these premiums will be paid directly to the insurance carrier on her behalf. Scharer also understands and agrees that, if she wishes to continue such benefits after September 30, 2017, she will be solely responsible for timely payment of all applicable premiums.
 - c. The City will provide Scharer with a signed letter of reference at set forth in Exhibit B to this Agreement and will respond to all employment reference inquiries directed to the City's Mayor by providing only Scharer's dates of employment and position(s) held. Scharer agrees to direct all employment reference inquiries to the City's Mayor.
2. Waiver and Release of Claims (Scharer's Promise Not to Sue): Except as stated in paragraph 3 below, Scharer irrevocably and unconditionally promises not to start or continue any lawsuit (including any judicial/court proceeding or arbitration) against the City of Dayton, Washington and/or any of its current, past and future council members, managers, employees, representatives, attorneys, agents and insurers in their individual and representative capacities (the "Released Parties"). Scharer understands and agrees that this promise means that she is releasing all of the Released Parties from, and waiving all of her rights with respect to: any and all claims, liabilities, causes of action, debts, obligations, promises, agreements and demands, both in law and in equity, which she has, may have or claim to have, based upon or in any way related to her employment and separation from

employment with the City whether those claims are known or unknown to Scharer when she signs this Agreement.

These waivers, releases and promises not to sue include but are not limited to all claims based on: negligent or intentional tortuous conduct; express or implied contract; obligations of fair dealing and good faith of any kind; wrongful discharge; and any other tort and/or common law theory of any kind. These waivers, releases and promises not to sue also include any claim for fraud, including but not limited to fraud in the inducement of this Agreement. These waivers, releases and promises not to sue also include but are not limited to: claims for any form of monetary relief (including but not limited to claims for any form of damages of any kind, back pay or front pay, punitive damages, and attorney fees and costs, etc.), reinstatement, reemployment (including but not limited to reinstatement and/or reemployment under the injured worker reinstatement and reemployment laws), and claims for any and all forms of damages or other remedies arising under federal, state and local statutes, regulations, rules, ordinances and/or rules of decisions dealing with employment matters and discrimination and retaliation in employment (including but not limited to any claims under: the Revised Code of Washington, Title VII of the Civil Rights Act of 1964, the Post Civil War Civil Rights Acts, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family Medical Leave Act, the Age Discrimination in Employment Act, the Older Worker Benefit Protection Act, the Employee Retirement Income Security Act, the Occupational Health and Safety Act of 1970, and the Lilly Ledbetter Fair Pay Act of 2009, all as amended as well as any and all administrative regulations issued under such authorities). *By signing below, Scharer also acknowledges and represent that she has been paid all wages of any kind that are due and owing to her as a result of her employment services through July 31, 2017 and that no un-asserted claims for wages of any kind exist.*

These waivers, releases and promises not to sue also specifically include any claims of any kind based on the state and federal constitution (including any and all claims of violations of substantive or procedural due process rights) as well as any other applicable statutory, contract, tort or other common law theories. Scharer also agrees to dismiss any pending lawsuits and arbitrations relating to claims that she has waived and released above if any such lawsuits or arbitrations have been filed.

3. Exceptions to Waiver and Release of Claims: The waivers and releases of claims in this Agreement are intended to be broad and comprehensive and to reach the maximum scope and extent permitted by law. The waivers and releases of claims in paragraph 2 above do not, however, apply to: any claim Scharer may have for enforcement of this Agreement, to claims challenging the enforceability of this Agreement under the Age Discrimination in Employment Act, to claims that cannot be waived as a matter of law, to claims for statutory worker's compensation or unemployment benefits, if any.

The waivers and releases of claims in paragraph 2 above do not prevent Scharer from filing, providing information or otherwise cooperating with any other administrative charge or complaint with the Equal Employment Opportunity Commission or other state and federal enforcement agencies. The waivers, releases and promises not to sue in this Agreement do, however, bar and prevent Scharer

from receiving any form of monetary relief (such as back or front pay, or other money damages like attorney fees and costs, etc.) or equitable relief (such as reinstatement and reemployment) as a result of any administrative complaint, claim, or investigation. *Scharer and the City intend the waivers and releases in this Agreement to reach the maximum extent permitted by law.*

4. No Future Employment: Scharer and the City agree that it is in the parties' mutual best interests to avoid any future employment relationship. For this reason, and in exchange for the separation payments and benefits provided under this Agreement, Scharer agrees that she will not at any time in the future seek or accept employment with the City, whether directly or indirectly, as a temporary, leased, or regular employee. Scharer further agrees that if she should seek such employment, whether knowingly or unknowingly, at any time in the future, she expressly waives the right to sue under applicable law if she is denied employment or is terminated upon mistaken hiring by the City.
5. Medicare Eligibility: By signing this Agreement, Scharer is representing that she is not Medicare eligible, is not a Medicare beneficiary, and that she does not reasonably expect to become Medicare eligible within 30 months. Scharer further represents that no Medicare payments have been made to her or on her behalf and that no liens, claims, demands, subrogated interests or other claims/causes of action exist arising from any claims released by this Agreement. Scharer also represents and warrant that the information provided to Released Parties for confirmation of her Medicare status, including her name, gender, date of birth, and Social Security Number, is complete, accurate, and current as of the date of this Agreement. Scharer agrees that she, and not the Released Parties, will be responsible for satisfying and paying any such liens, claims, demand, subrogated interests or other causes of action that may exist or be asserted to exist now or in the future with respect to the released claims in this Agreement. Scharer also agrees to indemnify and hold harmless all Released Parties from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising from or related to this Agreement and payments under it, any conditional payments made by Medicare or Medicaid, or any medical expenses or payments arising from or related to any claims released by this Agreement. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of any Released Parties in connection with such claims, demands, subrogated interests, or causes of action.
6. Purpose: It is understood and agreed that this Agreement is intended to assist in Scharer's transition from City employment and, in return, to assure that no claims will be made against the Released Parties. Nothing in the offering or the signing of this Agreement is to be construed as an admission of liability or wrongdoing on the part of anyone. Scharer's rights have not been violated.
7. "Scharer": As used in this Agreement, "Scharer" means Karen Scharer, her heirs, executors, administrators, assigns, agents, attorneys, her marital community if any, and any other person or entity by, for, or through whom she may act.

8. Entire Agreement and Severability: This Agreement reflects the entire agreement between Scharer and the City regarding this Separation Agreement. By signing below, Scharer agrees that she is not relying on any promises or representations other than what is stated in this Agreement. By signing this Agreement, Scharer also acknowledges and affirms that she fully understands that this Agreement may be used by any of the Released Parties as a complete defense to any claim, demand, action, or suit for damages that may be asserted by her or by other persons or agencies acting on her behalf.

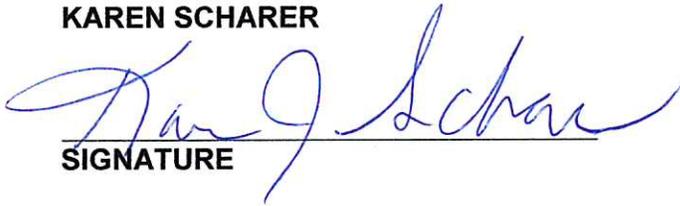
If any provision or part of any provision of this Agreement is found to be legally unenforceable and/or against public policy, such provision or part of any provision shall be deleted or modified by the Court or Arbitrator only as necessary to be enforceable. All other parts will remain in effect. If the waivers, releases and/or promises not to sue with respect to any of the waived and released claims are deemed to be invalid, unenforceable, or illegal, then the Court or Arbitrator making such determination shall reduce the effect of the waiver, release and promise not to sue only to the extent necessary in order to preserve the enforceability of the remainder of the waivers, releases and promises not to sue.

9. Understanding This Agreement: Every effort has been made to write this Agreement in plain and clear language. If she does not understand this Agreement, Scharer may contact the City of Dayton Mayor for clarification. Scharer is also advised to consult with an attorney at her own expense before signing this Agreement.
10. Arbitration of Disputes: In the event an issue arises regarding whether Scharer or the City has breached this Agreement and the matter cannot be resolved informally, any dispute regarding such issues shall be submitted to binding arbitration in the City of Dayton, Washington. In any dispute between Scharer and the City, the arbitration shall be conducted in pursuant to the employment rules of the American Arbitration Association (www.adr.org). Each party shall be responsible for its own attorney's fees and related costs at arbitration or on appeal, except as otherwise required by under Washington State statutory authority.
11. Timing of Offer and Effective Date: This offer will remain open for twenty-one (21) days from the time Scharer receives her copy. Furthermore, Scharer may revoke this Agreement at any time within seven (7) days following the day she signs it by delivering a written notice of revocation to the City Mayor at the City of Dayton, at 111. S. First Street, Dayton, WA, 99328. If Scharer does not revoke this Agreement, it will become effective immediately upon the expiration of the seven (7) day period.
12. Payment Date: Provided the Agreement becomes effective and the City has received an original Agreement signed by Scharer and all City property and information in Scharer's possession, then payment will be made in a single lump sum payment seven (7) business days after the date this Agreement becomes effective. Payment together with the signed reference letter noted above, will be sent via Certified Return Receipt

Mail to the most recent address in Employee's personnel file unless Employee specifies a different address below. Payment will be considered to be delivered on the date mailed.

THIS IS A WAIVER AND RELEASE OF CLAIMS. PLEASE READ CAREFULLY. BY SIGNING BELOW, EACH PARTY ACKNOWLEDGES THAT THEY HAVE HAD AMPLE OPPORTUNITY TO CONSULT WITH A LAWYER, UNDERSTAND ALL THE PROVISIONS OF THIS AGREEMENT, HAVE SIGNED THIS AGREEMENT FREELY AND VOLUNTARILY WITHOUT RESERVATION, AND UNDERSTAND THAT THIS IS THEIR FULL AND ENTIRE AGREEMENT.

KAREN SCHARER



SIGNATURE

8/14/2017

Date

Address for mailing:

107 W Richmond Ave

Dayton, WA 99328

FOR THE CITY OF DAYTON, WA



CRAIG GEORGE, MAYOR
DAWN NYSOE, MAYOR PRO-TEM

8/30/17

Date