

SEPARATION AGREEMENT AND RELEASE OF CLAIMS

THIS SEPARATION AGREEMENT AND RELEASE OF CLAIMS (“Agreement”) is entered into by and between **Tom Bergeson** (“Employee”) and the **City of Cannon Falls**, a Minnesota Municipal Corporation (“City”). Employee and the City are collectively referred to as the parties.

WHEREAS, the City currently employs Employee as its Public Works Director; and

WHEREAS, the Employee is subject to the City’s Personnel Policies that detail separation matters; and

WHEREAS, the City Council seeks the termination of the employment relationship with Employee, and the City and Employee mutually desire to conclude their employment relationship in an amicable manner, to resolve all existing or potential claims that may exist and to ensure that no potential claims or conflicts arise.

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises contained in this Agreement, the relinquishment of certain legal rights, and other valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Effective Date.** Pursuant to Minnesota Statutes §465.722, the effective date of this Agreement will be March 7, 2018, which is fifteen (15) days after approval by the City Council at a public meeting. Prior to the effective date, either the City or Employee may rescind this Agreement.
2. **Termination of Employment.** Employee’s last day of employment with the City is March 11, 2018. Effective February 9, 2018, Employee will be on paid administrative leave. While on paid administrative leave, the Employee shall be available on an as-needed basis to consult with the City. Employee’s salary and benefits may not be decreased from what Employee was receiving prior to the date Employee signs this Agreement.
3. **Severance Payments.** Employee shall receive the following payments from the City upon separation from employment with the City:
 - A. A lump sum payment which is equivalent to three months’ salary. This amount will be characterized as income and will be subject to applicable federal and state taxes, employment taxes, and other customary withholdings but will not be subject to PERA.
 - B. Payment of \$10,578.50 of accrued and unused vacation. This will be paid into Employee’s Post-Employment Health Care Savings Plan.

- C. Payment of \$1,458.76 for Employee's accrued and unused sick leave. This will be paid into Employee's Post-Employment Health Care Savings Plan.
4. **Insurance.** Through June 11, 2018, the City will keep Employee and Employee's dependents covered and pay 100% of the monthly premiums for life insurance, long term disability insurance and group health insurance for Employee and 50% of the cost of dependent coverage with the same or better coverage provided on February 8, 2018. After June 11, 2018, Employee's group health insurance benefits will lapse, subject to rights under COBRA and state law. The City will invoice Employee monthly for the dependent coverage and Employee must pay the invoice within thirty (30) days. If Employee does not make timely payment of the invoice, Employer shall cancel the dependent coverage.
 5. **No Further Claim to Compensation.** This Agreement fully and completely satisfies any and all obligations between Employee and the City that arise out of or relate to Employee's employment and resignation. Employee has no claim to any compensation from the City, in any form, beyond the compensation that is specifically described in this Agreement.
 6. **Release of Claims by City.** In consideration of the terms and benefits described in this Agreement, and as an inducement for Employee to enter into this Agreement, the City hereby fully and completely releases, acquits, and forever discharges Employee and Employee's attorneys, agents, representatives, insurers, heirs, executors, assigns, and other affiliates from any and all liability for any and all damages, actions, or claims, regardless of whether they are known or unknown, direct or indirect, asserted or unasserted, that arise out of or relate to any action, decision, event, fact or circumstance occurring before the City signs this Agreement. The City Council understands and agrees that by signing this Agreement it is waiving and releasing any and all claims, complaints, causes of action, and demands of any kind against Employee that are based on or arise under any federal or state law, including but not limited to the federal constitution, the state constitution, and any federal or state statute, regulation, rule, or common law.
 7. **Release of Claims by Employee.** In consideration of the terms and benefits described in this Agreement, and as an inducement for the City to enter into this Agreement, Employee hereby fully and completely releases, acquits, and forever discharges the City, its current and former Council members, its current and former officers, its current and former employees, and its current and former agents, representatives, insurers, attorneys, and other affiliates from any and all liability for any and all damages, actions, or claims, regardless of whether they are known or unknown, direct or indirect, asserted or unasserted, that arise out of or relate to any action, decision, event, fact, or circumstance occurring before Employee signs this Agreement. Employee understands and agrees that by signing this Agreement, Employee is waiving and releasing any and all claims, complaints, causes of action, and demands of any kind that are based on or arise under any federal or state law, including but not limited to the federal constitution, the state constitution, and any federal or state statute, regulation, rule, or common law, which

Employee may have against the City arising out of employment including, but not limited to, claims for breach of contract; breach of personnel policies or regulations; breach of fiduciary duty; fraud or misrepresentation; violation of the Minnesota Human Rights Act, the Americans with Disabilities Act, unauthorized or improper releases of private or confidential data related to the Employee in violation of the Minnesota Government Data Practices Act, denial of due process; defamation; intentional or negligent infliction of emotional distress; breach of the covenant of good faith and fair dealing; promissory estoppel; negligence; wrongful termination of employment; and any other claims for unlawful employment practices; except Employee does not waive any claim or cause of action Employee may have under Minnesota Statutes §466.07.

8. **Claims Not Waived.** By signing this Agreement, neither the City nor Employee is releasing or waiving any rights or claims that are based solely on events that occur after this Agreement is signed, or any right to institute legal action for the purpose of enforcing this Agreement. Additionally, Employee does not waive the following: (a) any right to apply for unemployment compensation benefits; (b) any claims arising under the Workers' Compensation Act; or (c) any right to file a charge with a governmental agency, including the Equal Employment Opportunity Commission, although Employee agrees that Employee will not be able to recover any award of compensation, damages, or any other monies if Employee files a charge or complaint or has a charge or complaint filed on Employee's behalf with any federal, state, or local government agency.
9. **Acceptance Period.** Employee has the right to review and consider this Agreement for a period of twenty-one (21) calendar days after receiving it. Employee is advised to seek the advice of legal counsel regarding this Agreement. If Employee signs this Agreement before twenty-one (21) calendar days have elapsed from the date on which Employee first received a copy of the Agreement to review, Employee will be voluntarily waiving Employee's right to the twenty-one (21) day review period.
10. **Revocation under ADEA.** Employee recognizes that by signing this Agreement Employee is waiving and releasing any employment discrimination, retaliation, or other claims that Employee might have under the Age Discrimination in Employment Act ("ADEA"). After Employee signs this Agreement, Employee will have seven (7) calendar days to revoke Employee's waiver and release of any claims arising under the ADEA. This right of revocation applies only to claims arising under the ADEA. For a revocation of claims under the ADEA to be effective, it must be delivered to City Attorney Roger N. Knutson, either personally or by United States mail within the seven-day period. If delivered by mail, the revocation must be postmarked within the seven-day period, properly addressed to Roger N. Knutson, Campbell Knutson, P.A., 860 Blue Gentian Road, Suite 290, Eagan, Minnesota 55121 and sent by certified mail, return receipt requested.
11. **Rescission under MHRA.** Employee recognizes that by signing this Agreement, Employee is waiving and releasing any employment discrimination and retaliation claims that Employee might have under the Minnesota Human Rights Act ("MHRA"). Under

the MHRA (Minnesota Statutes §363A.31), Employee has the right to rescind Employee's release of claims in writing within fifteen (15) calendar days after signing it. This right of rescission applies only to any claims arising under the MHRA. For a rescission of claims arising under the MHRA to be effective, it must be delivered to City Attorney Roger N. Knutson, either personally or by United States mail within the fifteen-day period. If delivered by mail, the rescission must be postmarked within the fifteen-day period, properly addressed to Roger N. Knutson, Campbell Knutson, P.A., 860 Blue Gentian Road, Suite 290, Eagan, Minnesota 55121 and sent by certified mail, return receipt requested.

12. **Effect of Rescission of Release of Claims.** If Employee revokes or rescinds any part of the Release of All Claims in this Agreement, paragraphs 3, 4, and 6 of this Agreement will automatically be rescinded without further action by either party.
13. **Return of Property.** Upon separation from employment, Employee agrees to immediately return any City property that is in Employee's possession. The City will provide Employee with a reasonable opportunity to remove Employee's personal effects from Employee's office in a manner that is not embarrassing and at a time when other City staff are not present.
14. **Representation by Counsel.** Employee acknowledges that Employee has been or has had the right to be represented by legal counsel of Employee's own choosing with respect to this Agreement and all matters covered by and relating to it. Employee further agrees and represents that Employee has not received or relied upon any advice or representations by the City or the City's counsel in entering into this Agreement. The parties acknowledge that they have consulted with their own legal counsel, that they have thoroughly read and understand the terms of this Agreement, and that they are voluntarily entering into this Agreement.
15. **No Admission of Wrongdoing.** Nothing in this Agreement may be construed to be an admission of liability or wrongdoing by, against, or on behalf of the City or Employee. Any form of wrongdoing or liability is expressly denied by the City and its representatives and by Employee and Employee's representatives.
16. **Choice of Law, Forum and Severability.** This Agreement is governed by the laws of the State of Minnesota regardless of Employee's domicile or status as a resident of Minnesota or any other state. The parties agree that the Minnesota state and federal courts will have exclusive jurisdiction over any dispute arising out of this Agreement. If a court determines that any part of this Agreement is unlawful or unenforceable, the remaining portions of the Agreement will remain in full force and effect.
17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to Employee's employment and separation from employment with the City. No party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Agreement are valid unless they are in writing and

signed by all parties. A copy of this Agreement will have the same legal effect as the original.

IN WITNESS WHEREOF, the parties have approved and executed this Agreement on the dates shown by their signatures.

Date: _____

TOM BERGESON

CITY OF CANNON FALLS

Date: February 20, 2018

BY: _____
Lyman Johnson, Mayor

Date: February 20, 2018

BY: _____
Lanell Endres, Interim City Administrator