

## **SEPARATION AGREEMENT, RELEASE OF LIABILITY AND CONFIDENTIALITY AGREEMENT**

**THIS DOCUMENT AFFECTS YOUR LEGAL RIGHTS. YOU SHOULD CONSULT  
WITH AN ATTORNEY OF YOUR CHOICE.**

Rick McNannay (hereinafter "Mr. McNannay") and Marcia McNannay (hereinafter "Mrs. McNannay") (collectively "the McNannays"), and the City of Colfax (hereinafter collectively "City of Colfax") enter into this Separation Agreement, Release of Liability and Confidentiality Agreement (hereinafter "Agreement"). The McNannays and the City of Colfax are each a Party to the Agreement, and are hereinafter sometimes referred to collectively as the "Parties".

1. Mr. McNannay will separate from employment with City of Colfax via resignation effective on March 16, 2020 (the "Separation Date"), at which time he will receive his final paycheck, to include payment for any accrued unused vacation hours accumulated through that date.

2. If Mr. McNannay and Mrs. McNannay sign this Agreement and in consideration for the promises contained herein, they will receive additional money and benefits as set forth in paragraph 4 of this Agreement.

3. Mr. McNannay shall have no coverage or entitlement to benefits under any of City of Colfax's employee benefit plans after the Separation Date, with the exception that the McNannays will remain covered under the City of Colfax's health insurance plan through March 31, 2020. Information will be provided to Mr. McNannay in a timely manner regarding COBRA coverage, which Mr. McNannay can purchase on his own behalf. However, this Agreement shall have no effect on Mr. McNannay's right and/or entitlement to draw retirement benefits.

4. In consideration for the terms of this Agreement, Mr. McNannay and Mrs. McNannay agree to accept additional payment in the amount of FOUR-HUNDRED AND THIRTY-FIVE THOUSAND DOLLARS (\$435,000) (the "Settlement Payment"). The Settlement Payment is to be made by three checks made out as follows, and delivered to the offices of Dunn & Black, P.S. no later than March 16, 2020:

a. One check made out to "Rick McNannay and Marcia McNannay" in the amount of \$271,506.75.

b. One check made out to "Dunn & Black, P.S." in the amount of \$85,000.

c. A second check made out to Dunn & Black, P.S." in the amount of \$78,493.25.

5. In exchange for and in consideration for the mutual covenants and promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to the fullest extent permitted by law, the Parties hereby voluntarily, knowingly and willingly agree to the following provisions and General Release on behalf of themselves, and their heirs, representatives, estates, agents, and assigns:

a. **General Mutual Release.** In exchange for the mutual promises made herein and to the extent permitted by law, the McNannays and City of Colfax, hereby fully waive, release and forever discharge the other, including all predecessors of the City of Colfax and all of its successors, assigns, and its council members, officers, directors, employees, assigns, agents, shareholders, attorneys, representatives, and insurers, including Clear Risk Solutions and Cities Insurance Association of Washington, their employees, agents and officers, jointly and individually, (each a "Released Party" and collectively the "Released Parties"), from any manner of suits, actions, or causes of action, including any claim for attorneys' fees or costs, existing at the time the Parties sign this Agreement, whether currently known or unknown to the Parties, under any possible legal, equitable, contractual, tort or statutory theory, including without limit, breach of contract and defamation. This General Release includes, but is not limited to, claims arising out of or in any way related to Mr. McNannay's employment and/or separation from employment with City of Colfax, claims arising out of alleged violations of federal, state or local laws or regulations, or common law related to employment discrimination, wages, work hours, collective bargaining, retaliation, wrongful termination, breach of employment contract, defamation, false light, libel, civil service rules or common law claims which were or could have been asserted, including claims for attorneys' fees and costs. The release is intended to include, but not be limited to, any and all claims arising under common law, the Age Discrimination in Employment Act, 29 U.S.C. section 621, et seq.; the Older Workers Benefit Protection Act; the Revised Code of Washington, other state and federal laws, the Equal Pay Act of 1963, 29 U.S.C. section 201-206; Fair Labor Standards Act, 29 U.S.C. section 201,et seq.; Rehabilitation Act of 1973 and amendments, 29 U.S.C. section 701, et seq.; Civil Rights Act of 1964 (Title VII), 42 U.S.C. section 2000(e) to 2000(e-17); 20 U.S.C. section 1681, 1682; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000D, et seq.; Americans with Disabilities Act, 42 U.S.C. Section 1201, et seq.; Washington Minimum Wage and Hours Act, Chapter 49.46 RCW; Washington Law Against Discrimination, Chapter 49.60 RCW; Washington Human Rights Commission Regulations, Title 162 WAC; and the Washington Wage and Hours Act, Chapters 49.48 and 49.52 RCW.

**Mr. McNannay specifically agrees and acknowledges that: (A) He understands the language of this Agreement, any questions he may have had during review of this Agreement were explained to his satisfaction and understanding, and his waiver of rights under this Agreement is knowing and voluntary as required under the Older Workers Benefit Protection Act; (B) He understands that the waiver and release contained in this Agreement specifically includes a waiver of all rights and claims he has or may have under the Age Discrimination in Employment Act, 29 U.S.C. §626 et seq., and any other federal, state, or municipal law or regulation relating to age discrimination; (C) He has been advised in writing by City of Colfax to consult with an attorney prior to executing this Agreement; (D) The consideration given by the City of Colfax in exchange for the release of the ADEA claims is in addition to that which Mr. McNannay is already entitled.**

This General Release does not prohibit any rights that cannot be waived under federal or state laws. However, the Parties waive any claim for monetary or injunctive relief for acts or omissions occurring prior to the date this Agreement is fully executed. Further, the Parties do not waive any rights or claims that may arise out of acts or events that occur after the date this Agreement is fully executed. If it is determined that any claim covered by this General Release cannot be waived as a matter of law, the Parties expressly agree that the General Release will nevertheless remain valid and fully enforceable as to the remaining released claims.

**b. No Other Claims (Leave, Wages, Accommodations, Notice Etc.).**

Mr. McNannay and Mrs. McNannay acknowledge that, except for payments and other benefits described in this Agreement, City of Colfax has fully satisfied all its obligations to Mr. McNannay as a matter of law, civil service rules, and City of Colfax policy up to and including the date Mr. McNannay and Mrs. McNannay sign this Agreement and Mr. McNannay Mrs. McNannay have no additional claims against City of Colfax or the Released Parties. Without limitation, Mr. McNannay and Mrs. McNannay acknowledge: (1) Mr. McNannay has been paid for all wages (including overtime), commissions, bonuses, incentives and other forms of compensation owed as of the date of the last paycheck he received before signing this Agreement; and (2) to the extent Mr. McNannay requested a reasonable accommodation as defined by applicable law, City of Colfax appropriately responded to Mr. McNannay's request. Mr. McNannay and Mrs. McNannay agree and acknowledge that the preceding information is factually accurate as to Mr. McNannay and may be used as a sworn statement of fact in any proceeding between Mr. McNannay, Mrs. McNannay and any Released Party. However, this does not apply to and/or affect Mr. McNannay's right to receive pay and benefits through the Separation Date and/or the McNannays' health insurance coverage under the City of Colfax's health insurance plan through March 31, 2020.

c. **No Pending Charges or Complaints.** The Parties acknowledge that they have not filed or otherwise pursued any charges, complaints or claims of any nature against any other Party(ies) or Released Party with any local, state or federal government agency or court on or prior to the date of signing this Agreement, which have not been dismissed, closed, withdrawn or otherwise terminated. If any government agency or court assumes jurisdiction of any charge, complaint, cause of action or claim covered by this Agreement, the Parties agree that they will take all necessary actions to request the agency or court withdraws from and/or dismisses the matter with prejudice as it relates to the Parties personally. If any Party is unable to preclude a charge or claim on their behalf, they agree that they will not seek or accept any personal relief, including but not limited to an award of monetary damages or reinstatement to employment, in connection with such a charge or claim. This does not apply to claims with the Washington State Employment Security Department relating to unemployment benefits or Washington State Department of Labor & Industries relating to workers' compensation claims.

6. Except as required by law or legal process, any and all provisions, terms, and conditions of this Agreement are deemed confidential and shall be treated as such by the Parties. The only exceptions to this confidentiality provision are disclosures pursuant to any valid public disclosure request, and to counsel, tax advisors, and the IRS on a need-to-know basis. This Agreement may also be admitted as evidence in any proceeding to enforce the terms of this Agreement.

7. Mr. McNannay, Mrs. McNannay and City of Colfax agree that this Agreement constitutes no admission of wrongdoing on the part of any party to this Agreement, and no past or present wrongdoing on the part of any party shall be implied by execution of this Agreement.

8. This Agreement shall benefit, and be binding on, the parties hereto, their respective heirs, legal representatives, successors, and assigns.

9. This Agreement is made in the State of Washington, and shall be in all respects governed by the laws of the State of Washington. Any issue requiring intervention of the court with respect to this Agreement shall have its venue in Spokane County, Washington. Mr. McNannay, Mrs. McNannay and City of Colfax hereby waive, to the extent permitted by applicable law, trial by jury in any litigation in any court with respect to, in connection with, or arising out of this agreement or the validity, protection, interpretation, collection or enforcement thereof (whether arising in contract, equity, tort or otherwise).

10. In the event of any action undertaken to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

11. Mr. McNannay and Mrs. McNannay represent and agree that they will not, publicly or privately, make, verbally or in writing, any false, disparaging, derogatory or otherwise inflammatory remark about City of Colfax or any of the Released Parties with regard to his former employment therewith. City of Colfax and the Released Parties represent and agree that they shall not now or ever in the future authorize, verbally, in writing or electronically, any formal public statement that is false, disparaging, derogatory or otherwise inflammatory about Mr. McNannay or Mrs. McNannay, or Mr. McNannay's employment, to any third party, and affirms and promises that it has not and will not make or solicit any formal or informal public comments, statements or the like that may be considered derogatory or detrimental to the good name and business reputation of Mr. McNannay. In regard to City of Colfax, this clause only applies to the individuals currently holding the position of Mayor, City Clerk, City Administrator, Finance Director, City Council Member, and City Attorney, while employed by City of Colfax. Any inquiries into Mr. McNannay's employment with City of Colfax will be answered solely with confirmation of Mr. McNannay's employment with City of Colfax, position as the Chief of Police, and the dates of Mr. McNannay's employment.

12. Mr. McNannay waives any further right or claim of reinstatement to his/her former employment with City of Colfax after the Separation Date, and agrees to make no claim or application for such employment in the future unless this provision is mutually waived in writing by the parties to this Agreement.

13. Upon submission of his resignation, Mr. McNannay will immediately return all City of Colfax property in his possession.

14. Mr. McNannay and Mrs. McNannay declare that this Agreement and its terms have been fully explained to them by their attorneys, or that they have chosen not to seek legal counsel; that they have read and fully understand the nature of this Agreement, and acknowledge that they fully understand this Agreement is intended to and does forever preclude any and all claims or causes of action of any kind or nature (through the date of this Agreement) which in any way arise out of or are connected with the employment of Mr. McNannay.

15. This Agreement may be executed in counterparts.

16. The parties acknowledge that should any party fail to execute this Agreement, this Agreement and its attachments may not be used in any subsequent legal proceeding, but rather is intended as an offer to resolve any potential dispute between the parties, and therefore shall not be admissible as evidence in any proceeding, unless fully executed by the parties.

17. By their signatures below, each party hereby **AFFIRMS AND ACKNOWLEDGES** that they have read the foregoing Agreement, that they have had sufficient time and opportunity to review and discuss it with the attorney of their choice, that they have had any questions about the Agreement answered to their satisfaction, that they fully understand and appreciate the meaning of each of its terms, and that they are voluntarily signing the Agreement on the date indicated below, intending to be fully and legally bound by its terms.

18. **Period of Consideration/Revocation.** Mr. McNannay agrees and understands that he has been provided until March 27, 2020 (a period of over twenty-one (21) days) to consider this Agreement and has voluntarily chosen to enter into this Agreement on this date. Mr. McNannay agrees and understands that his signature below, if prior to March 27, 2020, constitutes a waiver of the remainder of the twenty-one (21) day period.

Mr. McNannay understands that he may revoke his waiver solely as to an ADEA claim under this Agreement for a period of seven (7) days following the date he executes this Agreement (the "Revocation Period"). In order to make such revocation, Mr. McNannay must deliver to the City Clerk for the City of Colfax, on or before 5:00 p.m. of the last day of the Revocation Period, written notice of his intent to revoke his ADEA waiver and return to the City of Colfax twenty-five thousand dollars (\$25,000.00) of the Settlement Payment. All other waivers under this Agreement shall remain effective as of the Separation Date, regardless of whether Mr. McNannay revokes his ADEA waiver.

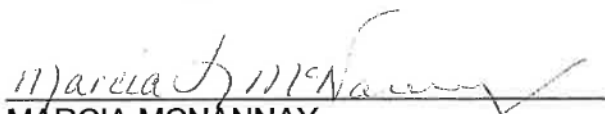
Rick McNannay certifies under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16<sup>th</sup> day of March, 2020.

  
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RICK MCNANNAY

Marcia McNannay certifies under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16 day of March, 2020.

  
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MARCIA MCNANNAY

James Retzer, as the Mayor of the City of Colfax, certifies under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16<sup>th</sup> day of March, 2020.



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CITY OF COLFAX

By: James Retzer

Its: Mayor