

RESIGNATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Resignation Agreement and General Release (“Agreement”) is entered into between the CITY OF EUREKA (“CITY”), on the one hand, and DEAN LOTTER (“LOTTER”) on the other. The CITY and LOTTER are collectively referred to as the “Parties” or individually as a “Party” with reference to the following:

RECITALS

A. The CITY currently employs LOTTER as its City Manager pursuant to the Parties’ City Manager At-Will Employment Agreement for Professional Services dated November 7, 2019 (“Employment Agreement”).

B. WHEREAS, the CITY and LOTTER have each determined that they are not as effective a team as they had mutually expected, hoped and demanded of themselves to serve the CITY’s residents.

C. WHEREAS, LOTTER has decided that he would like to pursue other professional opportunities and therefore by signing this Agreement resigns from his employment at the CITY.

D. WHEREAS the CITY and LOTTER wish to enter into this Agreement to set forth the conditions of LOTTER’s resignation from employment with the CITY as the City Manager by mutual agreement.

E. This Agreement is intended to be a full, complete and final settlement of each and every claim, cause of action, appeal, or liability, whether known or unknown, LOTTER may have or may have had against the CITY prior to and up through the date LOTTER executes this Agreement arising out of, or in any way related to LOTTER’s employment with the CITY except for any claims for Workers’ Compensation which are specifically exempted from this Agreement.

NOW THEREFORE, and in consideration for the promises contained herein, and other good and valuable consideration, receipt of which is acknowledged by the execution of this Agreement, and to avoid unnecessary litigation, it is agreed by and between the Parties as follows:

I. WAIVER AND RELEASE

A. **No Admission of Liability.** This Agreement and compliance with this Agreement shall not in any way be construed as an admission by the CITY or LOTTER of the truth of any allegations, or an admission of any unlawful acts or other liability whatsoever against each other or against any other person or entity. The CITY and LOTTER specifically disclaim any liability to, against each other, or against any other person or entity, on the part of themselves, any related person or its or their agents, representatives or successors in interest and assigns. This Agreement cannot be used by a Party to demonstrate any admission of liability or wrongdoing by another Party.

B. Mutual Release. As consideration for the payments and agreements that make up this Agreement, the Parties hereby irrevocably and unconditionally waive, release and forever discharge each other from any and all claims they may have against one another. Such claims include, but are not limited to:

1. Any and all charges, complaints, lawsuits, claims, liabilities, claims for relief, claims for punitive damages, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorney's fees and costs actually incurred), of any nature whatsoever, whether in law or in equity, known or unknown, suspected or unsuspected, actual or potential, which the Parties now have, own, or hold, or claim to have, own, or hold against each other, at common law or under any statute, rule, regulation, order or law, whether federal, state, or local, or on any grounds whatsoever, with respect to any act, omission, event, matter, claim, damage, loss, or injury arising out of the employment of and/or the separation from such employment between LOTTER and the CITY, including but not limited to its past or present council members, directors, governing body, employees, agents, predecessors, attorneys, divisions, departments, representatives, insurers, successors in interest and assigns, and all persons acting by, through, under or in concert with any of them, and/or with respect to any other claim, matter, or event arising prior to the Effective Date of this Agreement by the Parties, including, but not limited to, the following:

a) The California Fair Employment and Housing Act (California Government Code §12940 et seq.), the California Family Rights Act (California Government Code §12945.2, 19702.3 et seq.), California Government Code §11135, the Unruh and George Civil Rights Acts (California Civil Code §51 et seq.), the California Labor Code, including, but not limited to, Labor Code section 1194 and any related Wage Orders or similar directives/authorities issued by any state authority having enforcement powers, the Fair Labor Standards Act and any related regulations, interpretive bulletins or similar directives/authorities issued by any Federal authority having enforcement powers;

b) The Constitution of the United States, the Constitution of the State of California, Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.), the Equal Pay Act (29 U.S.C. §206(d)), the Rehabilitation Act of 1973 (29 U.S.C. §793 et seq.), the Family and Medical Leave Act (29 U.S.C. §2901 et seq.), the Employee Retirement Income Security Act of 1974, also known as "ERISA" (29 U.S.C. §1001 et seq.), and/or Sections 1981, 1983, 1985, 1986 or 1988 of Title 42 of the United States Code (42 U.S.C. 1981 et seq.), the Americans with Disabilities Act (42 U.S.C. §12101 et seq.);

c) Claims of Retaliation (California Labor Code §1102.5 et seq.), Claims of "Whistle-blowing," claims for breach of any type of contract, including written, oral or implied contracts, breach of any covenant, promise, or representation pertaining to LOTTER's employment, whether express or implied, claims for negligent hiring, retention, supervision, investigation, wrongful termination, discrimination of any type, interference with economic relations, failure to pay wages and/or benefits of any kind, fraud and/or misrepresentation of any kind, negligent or intentional infliction of emotional distress, slander, assault, battery, and/or any other claims arising under any other state or federal provision, act, ordinance, Constitution, law, common law, or arising under any contract or agreement, against the CITY.

2. This Agreement does not limit LOTTER's ability to bring an administrative charge with an administrative agency, but LOTTER expressly waives and releases any right to recover any type of personal relief from the CITY, including monetary damages or reinstatement, in any administrative action or proceeding, whether state or federal, and whether brought by LOTTER or on LOTTER's behalf by an administrative agency, related in any way to the matters released herein. Furthermore, nothing in this Agreement prohibits LOTTER from reporting possible violations of law or regulation to any government agency or entity, including but not limited to the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the Department of Labor and/or the Department of Justice, or making other disclosures that are protected under the whistleblower provisions of law. LOTTER does not need prior authorization of the CITY to make any such reports or disclosures and is not required to notify the CITY that he has made such reports or disclosures.

C. **Claims Not Released.** Notwithstanding the foregoing, the Parties agree that this general release does not apply to any claims LOTTER may have for Workers' Compensation benefits (except as to claims under Labor Code sections 132a and 4553), unemployment insurance, or indemnification as provided by state law, as well as any other claims that cannot lawfully be released. This Agreement will not affect LOTTER's possible future Workers' Compensation benefits and the CITY agrees not to use this Agreement to defeat LOTTER's right to future Workers' Compensation benefits (if any).

D. **Civil Code Section 1542 Waiver.** The Parties each hereby waive any and all rights that they may have pursuant to California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1. The Parties hereby expressly waive the provisions of California Civil Code section 1542 and further expressly waive any right to invoke said provisions now or at any time in the future.
2. The Parties recognize and acknowledge that factors which have induced each of them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and they hereby expressly assume any and all of the risks thereof and further expressly assumes the risks of waiving the rights provided by California Civil Code section 1542.

E. **Age Discrimination in Employment Act Waiver and Release.** The Age Discrimination in Employment Act of 1967 ("ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty or older. The Older Workers

Benefit Protection Act (“OWBPA”), 29 USC. §§ 626, et. seq. further augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this Agreement, LOTTER acknowledges that he is knowingly and voluntarily, for just compensation in addition to anything of value to which LOTTER is already entitled, waiving and releasing any rights he may have under the ADEA and/or OWBPA. LOTTER further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

1. This waiver/release is written in a manner understood by LOTTER.
2. LOTTER is aware of and has been advised of his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws.
3. LOTTER is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement, and the waiver and release of any rights he may have under the ADEA, the OWBPA, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) days.
4. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the date this Agreement takes effect.
5. LOTTER was advised and by this Agreement is advised in writing to that he should consult with an attorney prior to executing this Agreement. LOTTER has had an opportunity to discuss this waiver and release with, and to be advised regarding this Agreement, by an attorney of his choice, and does not need any additional time within which to review and consider this Agreement.
6. LOTTER has seven (7) days following his execution of this Agreement to revoke the Agreement by submitting a written revocation addressed to and received by Jack Hughes, of Liebert Cassidy Whitmore, on behalf of the CITY, by e-mail addressed to Jack Hughes at jhughes@lcwlegal.com.
7. LOTTER knowingly and voluntarily agrees to all of the terms set forth in this Agreement and knowingly and voluntarily intends to be bound by those terms.

LOTTER ACKNOWLEDGES BY HIS SIGNATURE TO THIS AGREEMENT THAT HE FULLY UNDERSTANDS HIS RIGHT TO DISCUSS THIS WAIVER WITH LEGAL COUNSEL, AND HAS CAREFULLY READ AND FULLY UNDERSTANDS THE WAIVER, AND THAT HE IS VOLUNTARILY AGREEING TO WAIVE ANY CLAIMS

**THAT HE HAS OR MAY HAVE UNDER THE AGE DISCRIMINATION IN
EMPLOYMENT ACT, THE OLDER WORKERS BENEFIT PROTECTION ACT, AND
ANY OTHER LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT
ARISING FROM OR RELATED OR ATTRIBUTABLE TO THE PARTIES'
ALLEGATIONS OR CLAIMS.**

F. **Effective Date.** The Effective Date of this Agreement shall be the last date on which all of the following occurs: all Parties have signed this Agreement, and the seven-day revocation period in section I(E)(6) above has expired without receipt of any revocation.

G. **Representation of No Pending Claims.** LOTTER represents that he has not filed any lawsuits, complaints, appeals, claims, applications or charges against the CITY or any related persons or against any of its or their past or present officers, directors, governing bodies, elected officials, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring on or prior to the Effective Date of this Agreement.

II. TERMS OF SEPARATION

The Parties agree to perform the following acts under the terms of this Agreement:

A. LOTTER shall immediately cease all duties as City Manager;

B. By his signature on this Agreement, LOTTER resigns from his employment at the City and by its signature on this Agreement, the City accepts LOTTER's resignation. LOTTER will no longer be a City employee on the Effective Date of this Agreement as defined in Section I(F) above;

C. Upon LOTTER's execution of this Agreement, he shall surrender all remaining CITY-owned equipment, vehicles, keys, badge(s), and CITY-issued identification card(s) in his possession, if any;

D. Pursuant to Section 3.B of LOTTER's Employment Agreement with the CITY, LOTTER shall receive a lump sum cash severance equal to the total of his then current aggregate salary and benefits that he would have been entitled to receive over a period of six (6) months in the amount of \$96,157.70;

E. The City shall cash-out LOTTER's accrued vacation (80 hours), executive leave (39 hours) and floating holidays (25 hours) in the amount of \$11,769.23;

F. In further consideration for this Agreement, the City shall pay LOTTER three pay periods of salary in the amount of \$21,250.02 in addition to the severance described in Section II(D) above;

G. The Parties waive Section 16 of the Employment Agreement. Therefore, LOTTER shall not repay moving and storage expenses to the City associated with his move to the City in 2019 to initiate his employment as City Manager;

H. LOTTER, all elected City officials, the City Manager of the City and all City Department Heads agree that they shall not defame or misrepresent one another concerning LOTTER's recruitment, hiring, character, conduct and/or employment at the CITY;

I. The City shall pay LOTTER the amounts described in Section II(D), Section II(E) and Section II(F) of this Agreement within five (5) calendar days of the Effective Date of this Agreement.

III. GENERAL PROVISIONS

A. **City Council Approval.** The Parties understand and agree that this Agreement is contingent upon approval by the CITY Council and will not become effective and enforceable unless and until the CITY Council approves the Agreement.

B. **Each Party to Bear Own Fees and Costs.** Each Party shall bear their own costs, expenses and attorneys' fees incurred in connection with the proceedings and/or events resulting in and/or preceding this Agreement, or in connection with any other claims made or investigated by either Party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each of the Parties hereto expressly waives any claim for recovery of any such costs, expenses or attorneys' fees from the other Party. Attorneys for all Parties to this Agreement do likewise expressly waive any claim for recovery of costs, expenses and/or attorney's fees from the opposing Party.

C. **No Prior Assignments.** LOTTER represents that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the CITY.

D. **Enforcement.** This Agreement is made and entered into in the State of California, and shall be governed, interpreted, and enforced under the laws of the State of California. The Parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within Humboldt County, State of California. The Parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which any of the Parties allege a breach of this Agreement or seek to enforce its terms, conditions, provisions, or obligations.

E. **Covenant to Effectuate Agreement.** Each Party hereto agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Parties to this Agreement.

F. **Waiver of Terms of Agreement.** No waiver by any Party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of the same, or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the Party to be charged or held bound. It is further

understood and agreed that if, at any time, a breach of any term of this Agreement is asserted by any Party hereto, that Party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including, but not limited to, damages.

G. **No Duress or Undue Influence.** The Parties represent and agree that they have carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, without any duress or undue influence on the part of or on behalf of any Party, entering into this Agreement.

H. **Consultation with Counsel.** The Parties affirm that, prior to execution of this Agreement, they have consulted with their respective legal counsel/representatives concerning the terms and conditions set forth herein, and that they understand the advice provided to them.

I. **Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, not expressly set forth in this Agreement, are of no force or effect.

J. **Interpretation.** This Agreement has been jointly negotiated and drafted by counsel for the Parties. The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties.

K. **Severability.** In the event that any one or more provisions of this Agreement shall be declared to be illegal, invalid, unenforceable, and/or void by a court of competent jurisdiction, such provision or portion of this Agreement shall be deemed to be severed and deleted from this Agreement but this Agreement shall in all other respects remain unmodified and continue in force and effect.

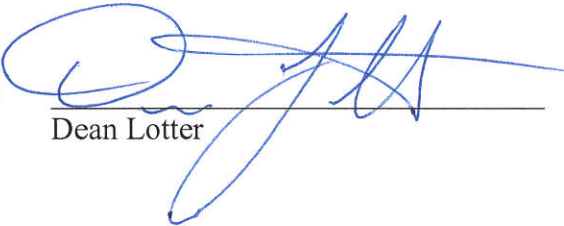
L. **No Precedent.** This Agreement is in no way intended, and shall in no way be construed, to restrict rights guaranteed to the CITY under local, state or federal law, rule, policy or agreement or to establish a precedent in this or any other matter, now or in the future.

M. **Execution of Originals.** This Agreement may be executed in one or more original documents signed by the Parties. A photocopy or facsimile transmission of the Agreement, including signatures, shall constitute evidence of the Agreement having been executed.


**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND
RELEASE INCLUDES A RELEASE BY LOTTER AND THE CITY OF ALL KNOWN
AND UNKNOWN CLAIMS.**

IN WITNESS WHEREOF, the Parties hereto have executed the Settlement Agreement and
General Release.

Dated: 5/22/2020

By: 
Dean Lotter


Dated: 5/20/2020

By: 
Mayor Susan Seaman
City of Eureka

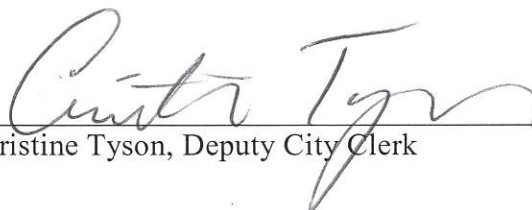
CITY OF EUREKA:

By: 
Pamela J. Powell, Acting City Manager

Approved as to form:

By: 
Robert Black, City Attorney

Attest:

By: 
Christine Tyson, Deputy City Clerk