

## EMPLOYMENT SEPARATION AGREEMENT

**THIS AGREEMENT**, dated this 23th day of April 2019 by and between **Sandy City**, a municipal corporation of the State of Utah, hereinafter called the "**City**", and, Brandy Smith, an employee of Sandy City, hereinafter called "**Employee**." The City and Employee are jointly referred to as the "**Parties**".

**PURPOSE.** Employee has been notified that on May 1, 2019 the Mayor will exercise his option to end the employment of Employee with City effective May 1, 2019 ("Effective Date"). The Parties have determined that it is in their mutual best interest to memorialize certain provisions relative to Employee's separation from Sandy City, and do so by the terms and conditions contained herein. By this Agreement and in return for the foregoing benefits, Employee agrees to release claims against the City and its officials, as set forth below.

**IN ORDER TO** secure the benefits herein described, some of which Employee would not otherwise be entitled to, and in consideration of the promises contained in this Agreement, Employee and the City expressly acknowledge and agree as follows:

1. **Separation Date.** Employee hereby formally memorializes Employee's separation from employment with Sandy City effective on May 1, 2019 ("Effective Date").

2. **Severance Pay.** The City shall pay to Employee a one-time severance payment in the amount of \$22,500.40 from which the City shall withhold taxes and other withholdings as required by law, City policy, or City ordinances.

3. **Leave/Separation Pay ("Vacation Accrual").** As of April 18, 2019, Employee had accrued 29.6 unused vacation hours valued at \$1,280.79. As full payment for Employee's vacation hour accrual, the City shall pay Employee the amount of \$1,280.79, minus the value of any vacation hours used by Employee between April 19, 2019 and the Effective Date, plus the value of any vacation hours accrued by Employee between April 19, 2019 and the Effective Date.

4. **Health Insurance and COBRA.** The City shall discontinue coverage of Employee and any dependents under the City's existing medical insurance, dental insurance and EAP program as of May 31, 2019. Employee may apply for health insurance coverage thereafter through the City's Retiree Health Program or pursuant to the provisions of the Comprehensive Omnibus Budget Reconciliation Act, (**COBRA**), Public Law 99-272, Title X, U.S. Code. Eligibility for COBRA, application requirements, and length of coverage, are governed by the provisions of COBRA. Employee should refer to that Act, in consultation with Employee's financial, legal, or other advisors, if desired, for any questions concerning such coverage. The City shall not be liable for any information or advice provided to Employee about COBRA or health insurance benefits Employee may wish to obtain or maintain after Employee terminates Employee's employment with the City.

5. **Other Leaves and Benefits.** It is understood that Employee, Employee's dependents, heirs, and assigns will not be entitled to accrue or use sick leave or other City leave or benefits from and after the Effective Date except as described above in Paragraph 4.

6. **Return Property.** Prior to receiving severance payment, Employee shall return to Mayor Bradburn or his designee, all City property and equipment in Employee's possession or which has been provided to Employee for use in Employee's employment responsibilities.

7. **Personnel File.** Employee reserves the right to inspect Employee's personnel file and to provide written supplementation from time to time as new and pertinent information may become available.

8. **Claims or Action Against City.** Employee further agrees as follows:

- a. With the exception for a claim for unemployment insurance, Employee will not file or cause to be filed any grievance, claim, charge, complaint, action, or cause of action (collectively referred to as "Action" in this Paragraph 8), against the City or any of its officers or employees, in any court of law or before any City, State or federal administrative agency arising from or related to Employee's employment with the City; and
- b. Employee may cooperate in any government agency investigation but Employee waives the right to receive any proceeds or benefits from any Action filed by any entity or person against the City, or any of its officers or employees, in any court of law or before any City, State, or federal administrative agency arising from or related to Employee's employment with the City.
- c. Employee will refrain from engaging in, assisting with, or cooperating in any effort or activity of any type by any person, firm, organization, or entity, public or private, where the purpose of such effort or activity is to injure in any way the interests of the City, or of any official, agent, or employee of the City, unless specifically required by law.

9. **Release and Waiver of Claims Against City.** On behalf of Employee and anyone claiming through him, Employee irrevocably and unconditionally releases, acquits and forever discharges the City, its successors and assigns, as well as each past and present official, employee, and anyone claiming through them (hereinafter collectively called "**Releasees**"), in each individual, official, and/or corporate capacity, from any and all claims, liabilities, promises, actions, damages and the like, known or unknown, which Employee has ever had against any of the Releasees arising out of or relating to Employee's employment with the City or Employee's separation therefrom ("**Claims**"). Claims include, but are not limited to the following:

- a. employment discrimination (including claims of sex discrimination and/or sexual harassment) and retaliation under Title VII (42 U.S.C.A. 2000e, etc.), the Age Discrimination in Employment Act, and under 42 U.S.C.A. Section 1981 and Section 1983, the Utah Antidiscrimination Act (UAA), and/or any other relevant Federal or State statutes, or municipal ordinances;
- b. disputed wages;

- c. wrongful discharge and/or breach of any alleged employment contract;
- d. the Americans With Disabilities Act (ADA) and the UAA;
- e. claims based on any tort, such as invasion of privacy, defamation, fraud, or infliction of emotional distress; and
- f. claims based on any other federal statute, law of the State of Utah, or ordinance, policy, or procedure of Sandy City.

10. **Rights of Employee Under Federal Law and Waiver.** Employee acknowledges that Employee has been informed pursuant to the federal Older Workers Benefit Protection Act of 1990 as follows:

- a. Employee has the right to consult with an attorney before signing this Agreement;
- b. Employee does not waive or give up any rights or claims under the Federal Age Discrimination in Employment Act that may arise after the date this Agreement is signed;
- c. Employee has twenty-one (21) days from the date of first receiving a copy of this Agreement to consider signing this Agreement. If Employee decides to sign this Agreement before 21 days have passed, the timing of such execution is solely Employee's choice and Employee acknowledges that Employee voluntarily waives the 21-day period to consider this Agreement; and
- d. Employee has seven (7) days after signing this Agreement to revoke the Agreement, and the Agreement will not be effective until that revocation period has expired. Employee further acknowledges that Employee understands that this Waiver is voidable for seven (7) calendar days after its execution, provided, that written notice of Employee's intent to revoke is delivered to the Human Resources Division within seven (7) calendar days after Employee's execution of this Waiver, and that Employee immediately reimburses the City for all funds paid to Employee and all funds expended by the City under this Agreement. In the event the Human Resources Division does not receive such notice, this Agreement will become final, binding, and irrevocable seven (7) calendar days after Employee executes this Waiver.

11. **Defense and Indemnity of Employee.** The City agrees to indemnify, hold harmless, defend, and protect Employee from all claims, demands, actions, obligations, causes of action or liability that have arisen or may arise from acts of omissions of Employee while employed by the City to the extent provided in and subject to the defenses and exceptions of the Governmental Immunity Act of Utah, and its amendments, which Act as of the date of this Agreement is found in Chapter 63G-7, Utah Code Annotated.

12. **Laws of Utah.** This Agreement shall be construed and governed by the laws of the State of Utah and the release contained herein shall not be deemed or construed as an admission of liability or responsibility at any time for any purpose.

13. **No Prior Agreements, Modifications, No Waiver.** This Agreement is the entire agreement between the parties related to its subject matter and supersedes and replaces all prior agreements and understandings, written and oral, between the parties. The Agreement may be modified or supplemented only by a writing signed by the Parties. The failure of either party to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of such provision of the right thereafter to enforce each and every provision. No waiver by either party to this Agreement, either express or implied, of any breach of any term, condition or obligation of this Agreement shall be construed as a waiver of any subsequent breach of that term condition or obligation or of any other term, condition or obligation of this Agreement.

14. **Severability of Provisions.** Whenever possible, each provision of this Agreement shall be interpreted to be valid under applicable law. If any condition, covenant, or other provision ("Provision") of this Agreement is held to be invalid or void by any court or government agency of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other Provision herein contained if it can reasonably be done. If such Provision shall be deemed invalid due to its scope or breadth, such Provision shall be deemed valid to the extent of the scope or breath permitted by law.

15. **All Payments and Benefits Included.** This Agreement memorializes all benefits and payments owed to Employee from the City of any kind or nature.

16. **Legal and Financial Advice.** Employee acknowledges and agrees that Employee has been advised to seek legal and financial advice about this Agreement from knowledgeable and experienced professionals, and Employee acknowledges that Employee has been given ample time and opportunity to seek such advice and to consider this Agreement prior to its execution. Based upon such deliberation and consultation, and based upon the expertise of the Parties and their representatives, it is agreed that the contract rights provided herein are exclusive of any other remedies provided under local, State, or federal law, or constitutions.

17. **Binding on Representatives, Heirs, Assigns.** This Agreement and its terms shall be binding on the representatives, heirs, beneficiaries, and assigns of the Parties.

18. **Confidential Information, Indemnity.** Employee shall not, either directly or through others, keep or disseminate any records of the City classified as confidential, or classified by the City as private, protected, or controlled under the Utah Government Records Access and Management Act and its amendments, which Act as of the date of the Agreement is found in Chapter 63G-2, Utah Code Annotated. Employee shall save, keep, and hold harmless the City and its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorney's fees, that may at any time arise or exist because of damages to property, bodily injury, or personal injury received by reason of Employee's breach of this paragraph, or by any willful or negligent or wrongful acts or omissions of Employee in releasing or disseminating such information obtained by him in the course of Employee's employment with the City.

19. **Remedies.** This Agreement was negotiated by the Parties with the benefit of legal advice and expertise. A reasonable period was provided for deliberation as well as legal and financial consultation by the Parties prior to the execution of this Agreement. Based upon such negotiation,

review, deliberation, and consultation, and based upon the expertise of the Parties and their representatives, it is agreed that the right of specific performance of the benefits, waivers, releases, indemnities, and settlements provided herein are exclusive of any other remedies provided under local, state, or federal laws, or constitutions.

Employee has had the opportunity to consult with an attorney before signing, and has read, understands, and executes this Agreement this \_\_\_ day of April 2019.

SANDY CITY

Kurt D. Bradburn  
Kurt D. Bradburn, Mayor



ATTEST:

Wendy D.  
City Recorder

EMPLOYEE

Brandy Smith  
Brandy Smith

WITNESS:

Katrina Frederick  
Print name: Katrina Frederick

SANDY CITY APPROVALS

Department KB  
Risk Mgt. JWP  
Budget AK  
Legal Form RWS  
Purchasing Compliance AK