

RELEASE AND SEPARATION AGREEMENT

This Release and Separation Agreement (the "Agreement") is made by and between the Port of Port Townsend, a Washington municipal corporation (the "Port") and Martha Jane "Sam" Gibboney ("Gibboney").

WHEREAS, since June of 2016, Gibboney has been and is currently employed by the Port as the Port's Executive Director.

WHEREAS, Gibboney has performed with the highest integrity and standards and has been instrumental in the recent successes of the Port, including improved financial performance, securing outside resources to aid with operational, business and development plans, improved risk management, including a program to remove derelict vessels, and the effective negotiation of a new labor agreement.

WHEREAS, notwithstanding Gibboney's accomplishments, the Port Commission has determined to move in a new direction with regard to an executive director.

WHEREAS, Gibboney has tendered her resignation from employment with the Port, and the Port has agreed to accept Gibboney's resignation subject to the terms and conditions of this Agreement.

WHEREAS, Gibboney resignation is not and should not be considered negatively but rather as typical of Gibboney's continued professionalism and support of the Port.

WHEREAS, the Port desires to provide a severance to Gibboney to assist in transition to other employment

WHEREAS, the Commission of the Port has executed the attached letter of recommendation for Gibboney attesting to her accomplishments as executive director.

WHEREAS, the parties enter into this Agreement to acknowledge the dedicated and excellent service of Gibboney and provide an orderly and certain transition for Gibboney and the Port.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Last Date of Employment. The Port accepts Gibboney's resignation. The parties agree that Gibboney's last day of employment with the Port will be August 15, 2018 (the "Separation Date"). Her salary shall be prorated to the Separation Date and paid in accordance with the Port's normal payroll procedure.

2. Agreement Not to File Claim or Suit. In part consideration of the severance to be paid as provided herein, Gibboney represents and warrants that she has not filed any complaint, charge, or suit against the Port with any governmental agency or court and that she will not do so at any time hereafter regarding her employment. Despite the foregoing representation and warranty, if any such claim has been filed, Gibboney agrees that this Agreement irrevocably

constitutes her withdrawal or dismissal of such charge, suit, or complaint. She further agrees to defend and indemnify the Port from any such charge, suit, or complaint.

3. Severance. In full consideration for Gibboney's resignation and Gibboney's agreements contained in paragraphs 2 and 7 herein and subject to paragraph 3.3, the Port shall provide Gibboney with the following (the "Severance").

a. Payment of six (6) months' salary and deferred compensation less applicable taxes and other required payroll withholding amounts. These amounts shall be paid on the first regular payroll date following August 15, 2018 (which is August 31st).

b. Payment of an additional two (2) months' salary and deferred compensation. Such amounts shall be paid less applicable taxes and other required payroll withholding amounts on a monthly basis (1/2 per month) with the second pay period of each month beginning in October 2018 and paid in accordance with the Port's normal payroll procedure (the "Periodic Severance Payments").

c. Payment of eight (8) months of the cost, under COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1986), of health benefit payments currently provided by the Port for Port employees and their families (the "COBRA Payments"). Such amounts shall be paid monthly.

d. Payment of Gibboney's unpaid vacation balance and unpaid sick leave accrued and unused as of the Separation Date pursuant to the Port's employee manual, on the first regular payroll date following August 15, 2018.

The foregoing Severance will not be paid until the release in Paragraph 7 becomes effective as set forth in Paragraph 16.

3.1. No Employment Relationship. The payment of Severance over time shall not be construed as creating an employment relationship between Gibboney and the Port.

3.2. Termination of Severance Payments. In the event Gibboney accepts employment with any government (federal state or local) during the two-month payment period for the Periodic Severance Payments, the Periodic Severance Payments will cease (prorated to the start date of the new employment), and the Port will have no further obligation to make any Periodic Severance Payments.

3.3. Termination of COBRA Payments. In the event Gibboney accepts employment with while the Port is paying COBRA Payments and the new employer provides health insurance to Gibboney, the COBRA Payments will cease when she and her family have coverage. It is the intent of the parties that Gibboney and her family receive health insurance for eight months but not that the COBRA Payments provide a windfall to Gibboney if she secures health insurance from a new employer. If the new employer does not provide coverage for her family then the Port will pay the family premium for the balance of the eight month period.

4. Full Payment. Gibboney agrees that no further payment of any type or amount is due to her by the Port, its officers, affiliates or agents, arising from her employment or pursuant to the terms of the Employment Contract dated June 7, 2016, or any other agreement.

5. Unemployment Compensation. Should Gibboney make application for unemployment compensation benefits after the Separation Date, the Port will identify the amounts paid pursuant to this Agreement but will not contest such application.

6. Employment Inquiries. Upon the receipt of a request for a reference check of Gibboney by any third party, either orally or in writing, the Port will provide the dates of Gibboney's employment with the Port, her rate of pay at the time of resignation, the position she held, that she resigned from her position and a copy of the Letter of Recommendation. Commissioners have indicated a willingness to provide recommendations for Gibboney consistent with the Letter of Recommendation. Therefore, upon Gibboney's written request, commissioners and staff of the Port of Port Townsend may provide additional information consistent with the Letter of Recommendation. This provision shall not be interpreted to limit the Port's obligation to disclose records pursuant to Washington's Public Records Act or court order.

7. Release. Gibboney, individually and on behalf of any marital community to which she is a party, and on behalf of herself, her heirs, executors, administrators, and assigns, hereby releases, acquits and discharges the Port, its successors and assigns, its present and former commissioners, officers, employees, and agents, both individually and in their governmental capacities, from any and all claims, damages, or disputes of every kind or nature (known or unknown) arising in any way out of the employment relationship, including, but not limited to, those which could be or have been alleged to have arisen under (a) common law; (b) under any federal, state or local statute, such as, but not limited to: the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967, as amended, including the Older Workers Benefit Protection Act; the Americans with Disabilities Act; the Washington State Law Against Discrimination, RCW 49.60 *et seq.*; the Washington State Minimum Wage Act, RCW 49.46 *et seq.*; RCW 49.12 *et seq.* (Labor Regulations/Industrial Welfare); RCW 49.48 *et seq.* (Labor Regulations/Wages-Payment-Collection); RCW 49.52 *et seq.* (Labor Regulations/Wages-Deductions-Contributions-Rebates); and the Fair Labor Standards Act; (c) any constitutional claims arising under the federal or state constitutions; (d) any other federal, state, or local statute, ordinance, or regulation, whether presently known or unknown; and (e) from any and all liability for any act or omission of the Port, its present or former commissioners, officers, employees, or agents, both individually and in their municipal capacities.

8. Marital Community. Gibboney represents and warrants that this Agreement is entered into for the benefit of and on behalf of her marital community.

9. Litigation. In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions of this Agreement or any instrument executed pursuant to this Agreement, the party prevailing in any such action or proceeding shall be entitled to an award of its costs and attorneys' fees incurred to be paid by the non-prevailing party to the extent permitted by law. In the event any judgment is secured by such prevailing party, all such costs and attorneys' fees of collection shall be included in any such judgment.

10. Neutral Authorship. Each provision of this Agreement has been reviewed and negotiated and represents the combined work product of the parties. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11. Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

12. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

13. Understanding of Agreement. Each party acknowledges that such party has read this Agreement and understands its contents, that such party has had the opportunity to have this Agreement reviewed by an attorney of such party's choice, and that such party either has consulted with an attorney or voluntarily has chosen not to consult with an attorney before signing this Agreement.

14. Applicable Law. This Agreement shall be deemed to have been made in the State of Washington and shall be governed by the laws of the State of Washington without regard to the laws pertaining to choice of law. Jurisdiction and venue for this Agreement shall lie exclusively in Jefferson County, Washington. The parties irrevocable waive any right to remove this matter to United States District Court.

16. Waiver. No waiver of any of the provisions of this Agreement shall be valid unless it is in writing and signed by the party against whom such claim of waiver is sought to be enforced, nor shall failure to enforce any right under this Agreement constitute a waiver of the same or a waiver of any other right hereunder.

17. GIBBONEY AFFIRMS THAT:

A. SHE HAS CAREFULLY READ THE FOREGOING AGREEMENT AND RELEASE AND KNOWS AND UNDERSTANDS THE CONTENTS THEREOF;

B. SHE UNDERSTANDS SHE IS RELEASING ALL CLAIMS SHE MAY HAVE ARISING FROM HER EMPLOYMENT BY THE PORT;

C. SHE HAS CONSULTED WITH, AND HAS DISCUSSED THIS RELEASE WITH LEGAL COUNSEL OF HER CHOOSING OR HAS VOLUNTARILY CHOSEN NOT TO CONSULT WITH LEGAL COUNSEL;

D. SHE HAS SIGNED THE FOREGOING AGREEMENT AND RELEASE AS HER FREE AND VOLUNTARY ACT AND DEED;

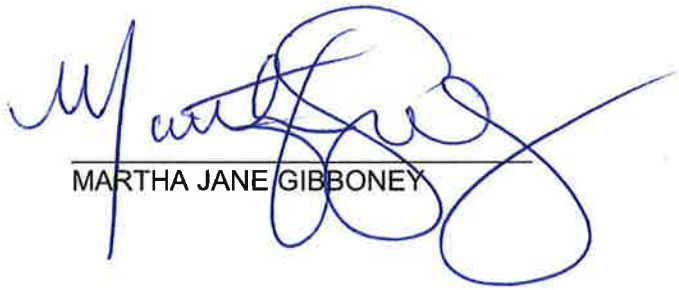
E. SHE UNDERSTANDS THAT FEDERAL LAW ALLOWS HER TWENTY-ONE (21) DAYS FROM RECEIPT OF THIS RELEASE WITHIN WHICH TO CONSIDER IT, AND THAT IF SHE SIGNS IT BEFORE THE EXPIRATION OF THE TWENTY-ONE (21) DAYS, SHE HAS DONE SO VOLUNTARILY;

F. SHE FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT SHE MAY REVOKE THIS RELEASE DURING THE SEVEN (7) DAYS FOLLOWING THE DATE SHE HAS SIGNED IT; AND

G. THIS RELEASE WILL NOT BE EFFECTIVE UNTIL THE EIGHTH (8TH) DAY FOLLOWING SIGNATURE BY GIBBONEY AND THE PORT ("EFFECTIVE DATE").

18. Entire Agreement. This Agreement supersedes all prior understandings and agreements between the parties and may not be amended orally, but only by a written document signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement this 15th day of August 2018.



MARTHA JANE GIBBONEY

PORT OF PORT TOWNSEND



COMMISSION PRESIDENT