

SETTLEMENT AND RELEASE

The City of Auburn, the Auburn Valley Humane Society, and Phil Morgan (collectively “the Defendants”) enter into the following Agreement with Jessica Kilman (“Claimant”) to settle any and all claims, as defined below, that are or could have been alleged by Claimant. **NOW THEREFORE**, in consideration of the promises and the mutual covenants herein set forth, the Defendants and Claimant agree as follows:

A. Definitions

The following definitions apply to this Settlement and Release Agreement:

1. Defendants

“The Defendants” means:

- The City of Auburn (“the City”) on its own behalf, and on behalf of each of its agents, departments, officers, officials, directors, volunteers, servants, former and current employees, subsidiaries, parent corporations, affiliates, heirs, successors, assigns, counsel, risk pool, insurers, and each of them individually, officially, personally, or corporately; and
- The Auburn Valley Humane Society (“AVHS”), on its own behalf, and on behalf of each of its agents (expressly including Phil Morgan), departments, officers, officials, directors, volunteers, servants, former and current employees, subsidiaries, parent corporations, affiliates, heirs, successors, assigns, counsel, risk pool, insurers, and each of them individually, officially, personally, or corporately.

2. Claimant

“Claimant” means Jessica Kilman, including any and all agents, employees, heirs, assigns, subsidiaries, and successors who shall be deemed to have notice of this agreement.

3. Parties

“Parties” means collectively the Defendants and Claimant.

4. Claims

“Claims” means any and all past, present or future claims, demands, rights, suits, complaints, actions or causes of action, whether based on common law, equity, statute, or regulation, that in any way arise from or relate to any acts, errors, or omissions of the Defendant arising out of or related to the claims alleged in *Kilman v. City of Auburn et al.*, Western District of Washington Cause No. 2:21-cv-00026-RSM, or that may otherwise grow out of all such facts and/or allegations in the future. “Claims” includes, without limitation, the claims arising out of the foregoing subject matter which the Claimant has

alleged or could have alleged, whether for common law torts, breach of contract, indemnity, contribution or subrogation, civil rights, injunctive relief, interest, lost profits, consequential damages, emotional distress, punitive damages, economic losses, attorneys' fees, court costs, any other loss, expense or form of relief.

5. Effective Date of Agreement

"Effective Date" means the date on which this Agreement is executed by the Claimant.

B. Terms and Conditions

1. Consideration

The Defendants agree to payment as follows:

The City of Auburn shall cause payment in the amount of \$5,000 (five thousand dollars) to be made to "Adam P. Karp in trust for Jessica Kilman."

AVHS and Phil Morgan shall cause payment in the amount of \$25,550 (twenty five thousand dollars, five hundred and fifty) to be made to "Adam P. Karp in trust for Jessica Kilman."

The Defendants additionally agree to the following terms:

- AVHS will provide City staff all prices and fees for services provided by AVHS in the Shelter by no later than April 30, 2021. City staff shall present the AVHS price and fee schedule to the City Council by May 31, 2021, in an open public meeting for review of the schedule for all operations consistent with the Professional Services Agreement between the City of Auburn and AVHS, Section IV(B). Such public meeting will allow for public comment in the manner described in the Agenda; and
- AVHS will remove fee shifting and liquidated damages clauses from its Return to Owner form.

The Parties agree that fee shifting and liquidated damages clauses in any Return to Owner form previously signed by Claimant are void and unenforceable.

Claimant agrees that if any animal belonging to her is impounded before the City of Auburn adopts the fee schedule contemplated above, she shall pay the applicable fees set forth in the current fee schedule. For avoidance of doubt, the first of any such impound will be counted as a "first impound" of an "altered animal."

2. Releases

This is a comprehensive release which will discharge the Defendants from any and all Claims, as defined above. This release will include, but not be limited to, the release of any and all claims for personal injury, economic loss, sickness, emotional distress, damage to property, trespass, breach of contract, nuisance, attorneys' fees, penalties, loss or damage that are known or unknown or which may occur in the future and all claims for expenses, contribution, subrogation and other losses of whatsoever kind, nature, or description related in any way to the facts and claims alleged in *Kilman v. City of Auburn et al.*, Western District of Washington Cause No. 2:21-cv-00026-RSM, whether past, present or future, known or unknown, conditional or unconditional, liquidated or unliquidated, or contingent or matured. The release shall be interpreted to include, the broadest possible release of past, present, and future Claims.

3. Reservation of Rights

The Parties reserve all rights and defenses—including mootness, based upon the changes contemplated in this Agreement—in the event any animal belonging to Claimant is impounded in the future.

4. Possessor of Claims and Indemnity

Claimant is the sole possessor of the Claims, and has sole authority to enter into this Agreement, and warrants that the Claims have not been assigned, sold, transferred or otherwise conveyed or disposed of those claims or causes of action. Should any such claim be brought against the Defendant, including consortium or spousal claims arising out of the same events, at any time in the future, Claimant agrees to indemnify and hold the Defendants harmless for all costs, fees, and expenses Defendants may incur.

5. Hold Harmless

The undersigned expressly declares and agrees that if any third party payor, including Medicare, has paid for any of the Claimant's costs, expenses, or fees, and has a conditional lien as a result of the same, the Claimant acknowledges that Claimant is solely responsible for the payment of the same from the proceeds of this settlement and further agree to contact the payor immediately, informing it of this settlement and to satisfy/pay/reimburse consistent with the Secondary Payer Statute if applicable. Claimant warrants that all payments due and owing are and will be the sole and exclusive responsibility of the Claimant, and further agree that the Claimant will indemnify and hold harmless the Defendant for any and all amounts paid and/or sought by any payor, including Medicare/CMS.

6. Cooperation

The Parties will cooperate in the preparation and execution of additional papers should any be necessary to fully and finally resolve the Claims between them.


7. General Terms

The Defendants and Claimant further agree to the following general terms:

- a) Each party hereto shall bear their own attorneys' fees, expenses, and costs incurred in connection with this dispute, the disputes which gave rise to it, and the preparation of this Agreement.
- b) This Agreement and all consideration given in furtherance thereof is the result of a compromise and settlement of disputed claims, and that neither the Agreement nor the consideration given therefor shall at any time or for any purpose be considered an admission of liability or responsibility (or lack thereof) by any of the parties hereto.
- c) Different or additional facts may be discovered after the Effective Date of this Agreement than what Claimant now knows or believes to be true with respect to the matters herein released. This shall not furnish grounds to void the settlement.
- d) This Agreement has been negotiated at arms' length between parties knowledgeable in the matters herein. Each party has had the opportunity to receive independent advice and explanation of the terms and effects of this Agreement and all related documents prior to execution of the Agreement. Accordingly, any rule of law, including but not limited to statutes, legal decisions or common law principles of similar effect, that would require the interpretation of any ambiguities in this Agreement against the party who drafted the pertinent language, is of no application and hereby is expressly waived. The provisions in this Agreement shall be interpreted in a simple and reasonable manner to effectuate the intentions of the parties hereto, and not in favor of or against any of the parties.
- e) Any disputes related to the enforcement or interpretation of this Agreement shall be adjudicated in King County Superior Court.
- f) This Agreement constitutes the final expression of any and all understandings respecting the subject matter, and supersedes all prior agreements and representations. Apart from what is stated herein, Claimant acknowledges that there are no additional promises or representations of any kind or nature.

AGREED AND EXECUTED this ____ day of March, 2021.

CLAIMANT

By 
Jessica Kilman

April 5 2021
Dated

THE CITY


By Kendra Comeau

April 11, 2021

The City of Auburn

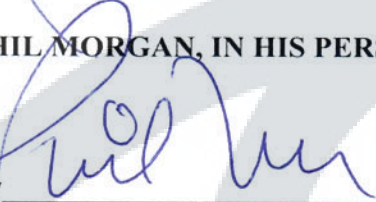
Dated

AVHS

By 
Auburn Valley Humane Society
By Phil Morgan, Executive Director

04/08/2021
Dated

PHIL MORGAN, IN HIS PERSONAL CAPACITY

By 
Phil Morgan

04/08/2021
Dated

