

AGREEMENT, WAIVER AND RELEASE

This Agreement, Waiver and Release (hereinafter "Agreement") is made and entered into this 9th day of January 2017, by and between Matthew Fulton (hereinafter "Employee") and the City of West St. Paul (hereinafter "Employer").

WHEREAS, Employee has been employed by Employer since August 5, 2013; and

WHEREAS, Employee and Employer mutually desire to set forth the terms and conditions under which Employee ends his employment with the City;

NOW, THEREFORE, in consideration of the mutual promises and covenants established in this Agreement, the parties agree as follows:

1. Separation. Employee hereby acknowledges and confirms he is separating his employment from Employer with his last day of in-office work to be January 9, 2017.
2. Benefits. Employer agrees to provide the following benefits to Employee subject to the rescission provisions of Sections 5 and 6:

A. Personal Leave, Severance Pay and Disability. Employee will be entitled to the following benefits:

- i. Authorized Paid Leave Benefits. Employee shall begin using his accrued paid leave benefits on January 10, 2017, until all paid leave benefits are exhausted, which shall occur on April 19, 2017 ("Paid Leave Period"). Employee will not receive a car allowance during the Paid Leave Period. Employee will accrue paid time off leave benefits during the Paid Leave Period, but shall exhaust all additional time accrued by April 19, 2017. Employer will contribute to PERA and will continue to match Employee's personal contribution to the ICMA-RC 457 deferred compensation program up to \$5,000 or the annual maximum per year authorized by law; and
- ii. Severance Pay Benefits. Following the Paid Leave Period, Employee shall be paid through payroll for a period of six months, beginning April 20, 2017 and ending October 20, 2017 ("Severance Period"), and shall receive compensation at Employee's established 2017 rate, less applicable payroll deductions. Severance payments will be made each pay period at the same times that compensation is paid to other employees. Employee will not accrue paid time off leave benefits or receive a car allowance during the Severance Period, but Employer will contribute to PERA and will continue to match Employee's personal contribution to the ICMA-RC 457 deferred compensation program up to \$5,000 or the annual maximum per year authorized by law. As of October 21, 2017, Employee shall no longer be considered an employee of the City.

iii. Long Term Disability Insurance Benefits. The City will pay for the cost of a converted long term disability insurance policy through the City's provider that will be in effect during the Paid Leave Period and the Severance Period.

B. Employee Insurance. Employee will continue to be covered by the Employer's health and dental benefits plan during his Paid Personal Leave Period and his Severance Period with the same coverages that he enjoys as of the date of the Agreement. Thereafter, Employee understands that COBRA allows Employee to continue health and dental benefits for a period of 18 months from the last date of employment and that coverage can commence on the first day after Employee's regular group health and dental benefits end. After the last date of employment, health and dental benefits may be continued at Employee's own cost. A notice will be sent regarding Employee's right to continue health and dental benefits under State and Federal law.

Employee understand that he will receive the benefits set forth in this Section 2 only if he signs this Agreement and does not rescind it within the fifteen (15) day rescission period provided for in Section 5.

3. Release of Claims. Employee, on behalf of himself and his heirs, representatives, executors, administrators, successors, agents, and assigns, knowingly, voluntarily, and unconditionally releases and forever discharges the City, its present, future, or former elected officials, Council members, managers, attorneys, representatives, officers, agents, employees, consultants, insurers (including the League of Minnesota Cities Insurance Trust), successors, assigns, employee welfare benefit plans and pension or deferred compensation plans, and their trustees, administrators and other fiduciaries, and all persons acting by, through, under, or in concert with them, or any of them ("Released Parties"), both individually and collectively, from any and all rights, claims, demands, controversies, attorneys' fees, liabilities, actions, causes of action, damages, losses, costs, expenses and compensation, of any nature, known or unknown, asserted or unasserted, fixed or contingent ("Claims"), which Employee may have, ever have had, or in the future may have against the Released Parties by reason of any matter, cause, or thing whatsoever, from the beginning of time to the date hereof, including but not limited to any Claims arising out of, based upon, or relating to Employee's recruitment, hire, employment, benefits, compensation, remuneration, or separation by the City, or any contract, agreement, or compensation arrangement between Employee and the Released Parties, or any of them. Employee hereby agrees that the Release set forth in this Paragraph 3 is a general release, and Employee waives and assumes the risk of any and all claims for damages which exist as of this date but of which he does not know whether through ignorance, error, oversight, negligence, or otherwise, and which, if known, would materially affect his decision to enter this Agreement.

The Claims released by this Agreement specifically include, but are not limited to, the following:

- (a) Any and all claims relating to Employee's hiring, terms and conditions of employment, termination, compensation, and benefits of any kind that Employee did receive or could have received in connection with his employment with the City;
- (b) Any and all claims relating to any conduct or statements by any of the Released Parties;
- (c) Any and all claims for violation of any federal, state or local Constitutions, laws, statutes, ordinances, policies, rules or regulations;
- (d) Any and all claims for violation of any of the following statutes:
 - (1) The Minnesota Human Rights Act, Minn. Stat. Chap. 363A;
 - (2) Any provision of Minn. Stat. Chapter 181: Employment, including the Minnesota Whistleblower Act;
 - (3) The Minnesota Government Data Practices Act, Minn. Stat. Chap. 13;
 - (4) The Veterans Preference Act, Minn. Stat. §197.46;
 - (5) Any act that provides workers' compensation benefits, including Workers Compensation Act, Minn. Stat. Chap. 176;
 - (6) Retaliation claims under Minn. Stat. §176.82;
 - (7) The Public Employment Labor Relations Act, Minn. Stat. §§179A.01 - .30;
 - (8) The Occupational Safety and Health Act, 29 U.S.C. §651, *et seq.*;
 - (9) The Minnesota Occupational Safety and Health Act, Minn. Stat. §182.65, *et seq.*;
 - (10) The Civil Rights Act, 42 U.S.C. §§1981 – 1988;
 - (11) The Fair Labor and Standards Act, 29 U.S.C. §201, *et seq.*
 - (12) The Fair Labor and Standards Act, Minn. Stat. §§177.21 – 177.35;
 - (13) The Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, including, without limitation, the Older Workers Benefit Protection Act, 29 U.S.C. §623;
 - (14) The Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*;
 - (15) The Rehabilitation Act of 1973, 29 U.S.C. §701, *et seq.*;
 - (16) The Family and Medical Leave Act, 29 U.S.C. §2601, *et seq.*;
 - (17) The Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*;
 - (18) Title VII of Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*;
 - (19) The National Labor Relations Act, 29 U.S.C. §151, *et seq.*
 - (20) The Equal Pay Act, 29 U.S.C., §206(d);
 - (21) The Immigration and Reform Control Act, 8 U.S.C. §§1324a – 1324b;
 - (22) The Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. §2101, *et seq.*;

- (23) Any other federal statute that provides protections of any kind to employees;
- (24) Any amendments to any of the laws referenced in this subparagraph (d);
- (25) Any and all claims under any other federal, state, city or local human rights, civil rights, wage-hour, wage-payment, pension, employee benefits, City's Personnel Policy, veteran's preference rights, labor, or other statutes, laws, rules, regulations, guidelines, constitutions, ordinances, public policy, and any and all common law or non-statutory claims, whether based in law or equity, and whether based upon tort or contract law, including, but not limited to: breach of contract; fraud or misrepresentation; negligent representation; promissory estoppel; severance; back pay; attorney's fees, expenses or costs; defamation (including both libel and slander); negligence; retaliation; pain, suffering, mental anguish, intentional/reckless/negligent infliction of emotional distress; negligent hiring, supervision, or retention; breach of the covenant of good faith and fair dealing; breach of a right of privacy; breach of fiduciary duty; conversion; false imprisonment; assault; battery; unjust enrichment; interference with contractual or other relations; interference with prospective business advantage; whistle-blowing claims; employment discrimination; sexual or other harassment; wrongful termination; breach of public policy; constructive discharge; and/or any other common law claims, based upon any conduct occurring up to and including the date of the complete execution of this Agreement and/or the date of Employee's retirement from the City;

Employee understands this Agreement does not restrict his right to file a charge of discrimination with the EEOC, however, by signing this Agreement he waives his right to any monetary recovery in connection with a local, state, or federal governmental agency proceeding involving the Employer and he waives his right to file a claim seeking monetary damages from the Employer.

Employee further understands and agrees that by releasing the Released Parties from the claims described in subparagraphs (a) through (d) above, he is giving up any and all rights to seek damages of any kind from any or all of the Released Parties for any conduct predating his execution of this Agreement, including, without limitation, compensatory damages, incidental damages, consequential damages, exemplary or punitive damages, attorneys' fees, costs and disbursements. Similarly, Employee understands that by releasing the Released Parties from the claims described above, he is giving up his rights to seek any type of injunctive and/or declaratory relief from any or all of the Released Parties for any cause of action predating his execution of this Agreement.

4. Consideration Period. Employee understands and acknowledges that he may take up to twenty-one (21) days from the date he receives this Agreement to consider it and seek counsel to advise him regarding the terms. Employee acknowledges that he received this Agreement on January 4, 2017, and that the twenty-one (21) days shall run from that date. Employee represents that if he signs this Agreement before the expiration of the 21-

day period, it is because he has decided that he does not need any additional time to consider whether he wishes to release any potential claims.

5. Right to Rescind By Employee. Employee understands and acknowledges that he has the right to rescind or revoke his release of any claims he may have under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621, *et seq.*, if done within **seven (7) calendar days** from the date he signs this Agreement. Employee understands and acknowledges that he has the right to rescind or revoke his release of any claims he may have under the Minnesota Human Rights Act (“MHRA”), Minn. Stat. Chap. 363, if done within **fifteen (15) calendar days** from the date he signs this Agreement.

This Agreement shall not become effective until the rescission or revocation period has expired. Employee understands that in the event he rescinds this Agreement, the City shall have no obligation whatsoever under this Agreement and the Agreement will be rendered null and void. To be effective, the rescission or revocation must be in writing and hand-delivered or mailed to Chantal Doriott, City Clerk, City of West St. Paul, 1616 Humboldt Ave., West St. Paul, Minnesota 55118, within the 15-day period. If mailed, the rescission or revocation must be postmarked within the 15-day period, properly addressed as set forth in the preceding sentence and sent by Certified Mail, Return Receipt Requested. If delivered by hand, it must be given to Chantal Doriott, within the 15-day period.

6. Right to Rescind By City. Pursuant to Minnesota Statute § 465.722, the City shall have fifteen (15) days after January 9, 2017, to rescind this Agreement. If the City so rescinds, the rescission must be in writing and hand-delivered or mailed to Employee at 1938 Christensen Ave., West St. Paul, within the 15-day period. If mailed, the rescission must be postmarked within the 15-day period, properly addressed as set forth in the preceding sentence and sent by Certified Mail, Return Receipt Requested. If delivered by hand, it must be given to Employee within the 15-day period. This Agreement shall not become effective until the rescission period has expired.
7. Consequences of Rescission. Employee agrees, understands, and acknowledges that the City’s obligations to him, as set forth in this Agreement, shall be unenforceable unless and until the rescission periods with regard to Paragraphs 5 and 6 have expired, and the parties have not rescinded or revoked this Agreement in any part.
8. Recommendation to Retain Counsel. Employee acknowledges that the City recommended that he retain counsel in connection with the negotiations relating to, and his execution of, this Agreement. Employee specifically acknowledges that the City’s obligations to recommend that he retain counsel, as required by the ADEA and/or the MHRA, have been fulfilled.
9. Knowing and Voluntary Waiver of Unknown Claims. Employee understands that this Agreement extends to all claims which the Employee does not know or suspect to exist at the time of executing this Agreement. By executing this Agreement, Employee intends to, and hereby does, release Released Parties from claims which he does not presently know or suspect to exist at this time.

10. No Lawsuits. Employee represents that there are no lawsuits initiated or pending by him against the Released Parties.
11. No Claims Exist. Employee confirms that he has no known workplace injuries and that he has received all benefits and leaves to which he has been entitled. Employee acknowledges and confirms that he has reported all hours worked and has been paid in full for all hours worked.
12. Non-Admission of Liability. The parties understand and agree that neither the agreements set forth herein nor the execution of this Agreement shall constitute or be construed as an admission of any liability, wrongdoing, or violation of any law or regulation by the City, or an admission of the existence of the facts upon which liability, wrongdoing, or violation of law or regulation could be based.
13. Data Practices Act. The parties agree that this Agreement is a public document under the Minnesota Government Data Practices Act and will not be protected as private, confidential, or non-public information. This Agreement will be treated as public data within the meaning of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.
14. Complete Agreement. The parties acknowledge and represent that no promise or representation not contained in this Agreement has been made to them, and acknowledge and represent that this Agreement contains the entire understanding between the parties and contains all terms and conditions pertaining to the settlement of the parties' disputes. This Agreement supersedes all previous agreements, whether oral or written, between Employee and the City.
15. Both the Employee and the City, its employees, consultants, agents, Council members acknowledge and agree that they will end the employment relationship in a mutually respectful manner, without making acrimonious statements or disparaging comments about the other now or in the future. The Employer, its employees, consultants, agents, and Council members will not contact or respond to potential future employers or inquiries from the media regarding future employment to provide written or verbal opinions or statements regarding the Employee without the express consent of the Employee.
16. Knowing and Voluntary Execution. Employee acknowledges that he has read this Agreement, that he fully understands his rights, privileges, and duties hereunder, and that he enters into the Agreement freely and voluntarily. Employee further acknowledges that he has had an opportunity to consult with an attorney of his choice to explain the terms of this Agreement and the consequences of signing it.
17. Counterparts. This Agreement may be signed simultaneously in two or more counterparts, each of which will be deemed the original, but all of which together will constitute one and the same document.

18. Severability Clause. In the event that any provision of this Agreement shall be held void or unenforceable by a court of competent jurisdiction which is affirmed on appeal, said judgment shall not affect, impair, or invalidate the remainder of this Agreement unless the provision declared totally or partially unenforceable destroys the release of claims provided by Employee in Section 3.
19. Governing Law and Draftsmanship. This Agreement will be construed and interpreted in accordance with the laws of the State of Minnesota. It is further agreed that any action initiated in connection with the interpretation of or adherence to the terms and provisions of this Agreement shall be venued solely and exclusively in state court, in the State of Minnesota, in the County of Washington. The parties to this Agreement agree and acknowledge that this Agreement shall be considered to have been drafted equally by each of the parties.

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EMPLOYEE

Matthew Fulton

Subscribed and sworn to before me
this ____ day of _____, 2017.

Notary Public

EMPLOYER
City of West St. Paul

By: Jenny Halverson
Its: Mayor

By: Sherrie Le
Its: Asst. City Manager

Subscribed and sworn to before me
this ____ day of _____, 2017.

Notary Public