



Communication to the City Commission

TO: City Commission
COPY: Martin Colburn, City Manager
FROM: Lauren Tribble-Laucht, Attorney
MEMO DATE: March 30, 2023
SUBJECT: Separation Agreement

EXECUTIVE SUMMARY:

Attached is a separation agreement with the City Manager, which he has executed.

The following are key terms of the separation agreement:

1. April 3, 2023 effective date
2. Contractual payouts including earned leave time totaling \$97,038.49
3. Standard mutual liability waivers
4. Standard mutual non-disparagement clause

The following motion is recommended.

RECOMMENDATION:

(5 affirmative votes required)

That the Mayor and City Clerk be authorized to execute the Separation Agreement and Release with Martin A. Colburn, subject to approval as to its form by the City Attorney.



ALWARD FISHER
ATTORNEYS AT LAW

Joseph C. Fisher
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March 27, 2023

Lauren Tribble-Laucht
City Attorney
400 Boardman Ave.
Traverse City, MI 49694

RE: *Martin Colborn, City Manager*

Dear City Attorney Tribble-Laucht:

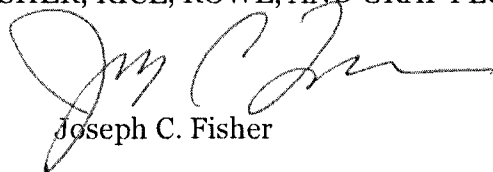
Enclosed is the Separation Agreement and Release between the City of Traverse City and City Manager Martin A. Colburn. Mr. Colburn has fully executed this document.

The delivery and subsequent resignation of Mr. Colburn is contingent upon approval of this Agreement and Release by the Traverse City City Commission at its regularly scheduled meeting on April 3, 2023. In the event the City Commission does not approve the terms and conditions of this Agreement and Release, then I deem the Agreement and Release void and it is to be returned to my office.

Thank you for your anticipated cooperation.

Very truly yours,

ALWARD, FISHER, RICE, ROWE, AND GRAF PLC



Joseph C. Fisher

JCF/aar
Enclosures

cc: Martin A. Colburn (via E-Mail)

SEPARATION AGREEMENT AND RELEASE

THIS SEPARATION AGREEMENT AND RELEASE (the "Agreement") is made by and between **Martin A. Colburn** ("Employee") and the **City of Traverse City**, a Michigan municipal corporation ("City" or "Employer").

RECITALS

- A. Employee was employed by the City of Traverse City as its City Manager.
- B. Employee and the City were subject to an Employment Agreement for City Manager, dated August 15, 2022 ("Employment Agreement"), which is incorporated herein by reference. The parties agree that this Agreement supersedes the Employment Agreement.
- C. Employee submitted his voluntary resignation to the City on April 3, 2023.
- D. On April 3, 2023, the City of Traverse City Commission accepted Employee's resignation, effective immediately, subject to certain waivers of provisions in the Employment Agreement, as set forth in the motion passed by the City Commission, which is incorporated herein by reference.

In consideration of the recitals and the mutual promises and payments provided for herein, Employee and the City of Traverse City agree as follows:

- 1. **Resignation Date.** Effective April 3, 2023 (the "Resignation Date"), Employee's employment relationship with the City is terminated, and any and all rights or obligations of either party arising out of their employment relationship shall terminate except as outlined in this Agreement.
- 2. **Payments.** As consideration for signing this Agreement, and in compliance with the promises herein, the City promises to pay Employee as follows:
 - A. Severance Payment. The equivalent of one hundred eighty (180) calendar days severance pay for a total amount of Seventy-Two Thousand Dollars and 03/100 (\$72,000.03), less all applicable tax withholdings (for the avoidance of doubt, such payments shall not be eligible for Section 457 Deferred Compensation Plan match contributions), payable in a single lump sum payment;
 - B. Accrued Vacation Payment. The equivalent of Three Hundred Sixteen (316) hours of accrued vacation hours for a total amount of Twenty-One Thousand Two Hundred Sixty-Nine Dollars and 23/100 (\$21,269.23), less all applicable withholdings, payable in a single lump sum payment;
 - C. Short Term Leave Payment. The equivalent of Fifty-Six (56) hours of short term leave for a total amount of Three Thousand Seven Hundred Sixty-Nine Dollars and 23/100 (\$3,769.23), less all applicable withholdings, payable in single lump sum payment; and

D. COBRA Payments. To the extent Employee timely elects to continue medical, vision and/or dental insurance coverage for him and his eligible dependent under COBRA, the City will pay the premium for 240 days of the COBRA coverage elected by Employee. The 240 days of COBRA premiums payable by the City begins on May 1, 2023 and ends on December 31, 2023, which shall be paid directly to the third party administrator. COBRA premiums due after December 31, 2023 are the sole responsibility of the Employee. If Employee receives coverage under another employer's group health plan he shall notify the City immediately and the City's obligation to pay COBRA premiums shall cease.

All other benefits to which Employee was eligible as an employee of the City ceased as of the Resignation Date.

3. **Mutual Release.** In consideration for the promises made by the City in this Agreement, Employee, for himself and his family, heirs, executors, administrators, personal representatives, agents, employees, assigns, legal representatives and accountants, affiliates, and for any partnerships, corporations, sole proprietorships, or other entities owned or controlled by him, fully releases, acquits, and forever discharges the City of Traverse City, its Commission and Commissioners, its past, present, and future agents, representatives, insurers, employees, attorneys, successors, and assigns, from any and all charges, actions, causes of action, claims, grievances, damages, obligations, suits, agreements, costs, expenses, attorneys' fees, or any other liability of any kind whatsoever, suspected or unsuspected, known or unknown, which have or could have arisen out of Employee's employment with the City, and/or separation of employment with the City, and/or any other occurrence or claim whatsoever arising on or before the date this Agreement is executed, including, but not limited to:

A. Claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act ("ADA"), the Michigan Elliot-Larsen Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, the Michigan Whistleblower's Protection Act, and/or any other state, federal, local, or municipal statute, law, constitution, ordinance or regulation; and/or

B. Any claims or charges filed with any administrative agency (other than the State Unemployment Insurance Agency); and/or

C. Any other employment-related claim whatsoever including, but not limited to, claims relating to implied or express employment contracts, including without limitation the Employment Agreement; public policy or tort claims; retaliatory discharge claims; negligent hiring, retention, or supervision claims; defamation claims; wrongful discharge claims; intentional infliction of emotional distress claims; invasion of privacy claims; intentional interference with contract claims; Open Meetings Act claims; intentional interference with business relations claims; negligence claims; detrimental reliance claims; loss of consortium claims; promissory estoppel claims; personal injury claims; common law claims; claims for compensatory or punitive damages; claims for back and front pay; claims for attorneys' fees and costs; claims relating to legal restrictions on the City's right to terminate employees, or pursuant to any other claim whatsoever, arising

out of or relating to Employee's employment with the City of Traverse City and/or termination of employment from the City of Traverse City, and/or any other occurrence to the date of this Agreement, but excluding claims which Employee cannot waive by law, and claims for breach of this Agreement.

In consideration for the promises made by Employee in this Agreement, the City of Traverse City, its past, present, and future agents, representatives, insurers, employees, attorneys, successors, and assigns, fully releases, acquits, and forever discharges Employee from any and all charges, actions, causes of actions, claims, grievances, damages, obligations, suits, agreements, costs, expenses, attorneys' fees, or any other liability of any kind whatsoever, suspected or unsuspected, known or unknown, which have or could have arisen out of Employee's employment with the City, and/or termination of employment with the City, and/or any other occurrence or claim whatsoever arising on or before the date this Agreement is executed.

4. **Workers Compensation Claims.** Employee represents that during the course of his employment with Employer, he did not suffer any on-the-job injuries of any sort (physical or mental) and that he has no intention or basis for pursuing a workers compensation disability action against Employer.

5. **Waiver of Future Employment.** Employee waives all rights to employment with the City of Traverse City, with the exception of elected and appointed board or commission offices, and agrees to never apply for such employment. If Employee does apply for employment with the City of Traverse City, Employee agrees that the City of Traverse City need not employ him, and that if the City of Traverse City declines to employ him, it shall not be liable to Employee for any cause or damages whatsoever.

6. **Return of City Property.** Employee agrees to release and return to the City all property, files, equipment, contracts, documents, manuals, credit cards, any and all City keys and security cards, identification cards, computer hardware and software, passwords and/or passcodes used to access accounts or other systems used by the City, and any other tangible or intangible items purchased or provided by the City or developed for the benefit of the City during the course of Employee's employment.

7. **Cooperation Regarding Consultation and Future Litigation.** If information, advice and/or consultation are needed after the Resignation Date and before the final severance payment, Employee agrees to be a consultant to the City and its employees and to provide such advice and consultation as requested by a City official, without charge to the City. If, after the final severance payment is made, Employee agrees to act as a consultant to the City, the City agrees to compensate Employee at the rate of One Hundred Dollars (\$100.00) per hour, pursuant to City policy. Employee further agrees to assist the City in any and all future litigation in which his appearance as a witness or otherwise is necessary, in accordance with the City policy rate of \$100.00 per hour.

8. **Consideration.** Employee acknowledges that the payments made to him pursuant to paragraph 2 of this Agreement in exchange for the release of claims in paragraph 3 of this Agreement are in addition to anything of value to which he is already entitled. Employee

acknowledges and represents that, except as set forth in this Agreement, all compensation and benefits due him by the City have been paid, and that he has no outstanding claims for any compensation and benefits.

9. **No Liability.** It is understood by all parties that this Agreement is a compromise and does not constitute an admission of fault or guilt on the part of any party.

10. **Non-disparagement.** Each party shall in the future refrain from making any disparaging or negative comments to any third party about any of the parties to this agreement.

11. **Consideration Period.** Employee acknowledges that he has been given three (3) days to consider the terms of this Agreement before signing the Agreement.

12. **Full Integration.** This Agreement contains and compromises the entire agreement and understanding of the parties. There are no additional promises or terms of the Agreement between the parties other than those written herein, including without limitation, the prior Employment Agreement between the parties, which is superseded by this Agreement. The parties declare and understand that no promises, inducements, or agreements not contained in this Agreement have been made to them, that this Agreement contains the entire agreement between the parties, and that the terms of this Agreement are contractual and not merely a recital. In agreeing to sign this Agreement, Employee acknowledges that he has not relied on any statements or explanations made by Employer or its attorneys.

13. **Severability.** Should one or more of the provisions of this Agreement be found to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions contained herein shall not be impaired or affected in any way.

14. **Consultation with Attorneys.** Employee understands and agrees that he has been advised to consult with his attorneys prior to executing this Agreement.

15. **Choice of Law.** This Agreement shall be interpreted in accordance with the laws of the State of Michigan, without regard to conflicts of law principles. Any action related to this Agreement shall be instituted in Grand Traverse County, Michigan.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, and may be signed via facsimile or by email scanned copy, and that each such counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute one Agreement.

EMPLOYEE ACKNOWLEDGES THAT HE IS COMPETENT TO EXECUTE THIS AGREEMENT, THAT HE HAS CAREFULLY READ EACH OF ITS PROVISIONS, THAT HE HAS HAD THE OPPORTUNITY TO REVIEW THE AGREEMENT WITH LEGAL COUNSEL AND THAT HE UNDERSTANDS ITS CONTENTS. EMPLOYEE, ACCORDINGLY, ENTERS INTO THIS AGREEMENT VOLUNTARILY.

MARTIN A. COLBURN

A handwritten signature in black ink, appearing to read "Martin A. Colburn", is written over a horizontal line.

Dated: 3-29-2023

CITY OF TRAVERSE CITY

By: Richard I. Lewis, Mayor

By: Benjamin C. Marentette, City Clerk

Approved as to form:

Lauren Tribble-Laucht, City Attorney