

**SEPARATION AND RELEASE AGREEMENT** ("Agreement") made this \_\_\_\_\_ day of February 2020, by and between \_\_\_\_\_ ("Employee") and the City of Ann Arbor ("City").

Employee and City are referred to in this Agreement collectively as "Parties".

**Definitions:** For purposes of this Agreement:

- A. "Employee" means Employee, his heirs, personal representatives, and assigns.
- B. The "City" means the City of Ann Arbor, its departments, division, boards, committees, and all past and present officers, City Council Members, employees and agents, in both their individual and representative capacities.

WHEREAS, Employee is employed by the City as the City Administrator under an employment contract dated May 9, 2016, as amended ("Employment Contract");

WHEREAS, the City wishes to terminate the employment relationship with Employee effective February 29, 2020;

WHEREAS, Employee and the City wish to settle and resolve all matters pertaining to Employee's employment with the City and Employee's separation from employment with the City and have an orderly transition; and

WHEREAS, the City, without any admission of liability, agrees to resolve this matter as set forth below.

THEREFORE, in consideration of the promises and agreements set forth below, Employee and the City agree as follows:

1. Employee will conclude his employment with the City on February 29, 2020 ("Termination Date").
2. Pursuant to Section 2(B)(2) of the Employment Contract, the City will pay Employee the equivalent of twelve (12) months' severance pay. The amount of severance pay will be calculated based on the annual salary Employee was receiving on the Termination Date (\$223,600.00) ("Severance Pay"). This payment will be made in a lump sum within 30 days after the Termination Date. The gross payment will be less any withholdings for taxes, or withholdings authorized by Employee. Employee acknowledges and agrees that this payment, after withholdings, will be less than \$223,600.

3. In addition, pursuant to the Employment Contract, the City will also pay Employee the accrued, but unused, sick and vacation leave time as of the last day of employment-, if any, to which the Employee is entitled in accordance with the City's personnel rules, policies and procedures in effect on the Termination Date (“Leave Time Payout”). The Leave Time Payout will be paid within thirty (30) days after the Termination Date.
  
4. On behalf of himself, individually, and his heirs, executors, and spouse, Employee unconditionally releases and discharges the City from any and all claims, demands and causes of action of whatever kind or character, joint or several, which Employee has or might claim to have against the City for any and all injuries, harm, damages, penalties, costs, losses, expenses and awards, attorney's fees and/or other liability, if any, whatsoever, arising from the beginning of his employment through the time of Employee's execution of this Agreement, suffered or claimed by Employee as a result of any and all alleged acts, omissions, or events, whether known or unknown, including, but not limited to:
  - a) any injury of any type whatsoever which is claimed by Employee to have arisen out of or in the course of employment with the City or separation from employment with the City, including but not limited to, any express or implied right of employment or termination restricted to circumstances of good or just cause;
  - b) alleged violation of rights under any law providing for equal employment opportunity or affirmative action, including but not limited to, the Civil Rights Acts of 1964 and 1991 (42 U.S.C. § 2000d *et seq.*) the Civil Rights Act of 1866 (42 U.S.C. § 1981 *et seq.*), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 *et seq.*), the Elliott-Larsen Civil Rights Act (MCL 37.2101 *et seq.*), the Persons with Disabilities Civil Rights Act (MCL 37.1101 *et seq.*), the Whistleblowers' Protection Act (MCL 15.361 *et seq.*), or similar federal, state or local laws, ordinances or regulations whether now in existence or subsequently recognized by the common law or enacted by legislative bodies;
  - c) any and all claims arising out of, related to, or based upon an alleged violation

of the Public Employment Relations Act (MCL 423.201 *et seq.*), the Payment of Wages and Fringe Benefits Act (MCL 408.471 *et seq.*), the Bullard Plawecki Employee Right-to-Know Act (MCL 423.501 *et seq.*), or any other federal, state, or local statute, ordinance, constitution or common law;

- d) breach or violation of due process, any employment policies, practices or procedures, collective bargaining agreement;
- e) emotional distress, pain and suffering, loss of consortium, interference with contractual relations or injury to reputation, and;
- f) any and all claims of retaliation.

The only exclusion from this release and agreement not to sue is a claim that some term of this Agreement has been violated.

5. In consideration of Employee's obligations outlined in this Agreement, the City agrees as follows:

- a) Employee shall be paid an additional lump sum payment of \$1,000. This payment will be made in a lump sum within 30 days after the date of Termination Date. The gross payment will be less any withholdings for taxes, or withholdings authorized by Employee. Employee acknowledges and agrees that this payment, after withholdings, will be less than \$1,000.
- b) Employee acknowledges that the total sum of money referenced in this section is in addition to anything of value for which Employee would otherwise have been entitled. Employee also acknowledges that he is not entitled to any other monies from the City, including but not limited to, any type of bonus, incentive, merit increase, or awards under any City policy, plan, or program, other than the Severance Pay and Leave Time Payout, referenced above.

6. This Agreement does not affect any rights or benefits Employee may be entitled to in any pension or deferred compensation in which Employee was a participant prior to Employee's separation from City employment. Employee's Employment Contract and the plan documents for such plans govern the rights and obligations of both Parties, which include, but are not limited to, all rights the City has to change, modify, or amend the plans as may

be set forth may be in the plan documents. Employee's coverage under the City's medical, vision, and dental programs will continue until the Termination Date, at which time such coverage will terminate in accordance with the plan documents. Pursuant to the Employment Contract, the City's contribution to the Employee's 401(a) plan vested effective June 27, 2019, but the City's contribution to the Employee's Retirement Healthcare Reimbursement Account did not vest by the Termination Date. Employee may be eligible for continued medical benefits following his separation, through COBRA. It is Employee's responsibility to timely complete any paperwork necessary for retiree health care coverage or COBRA coverage and all payments for COBRA coverage are solely the responsibility of Employee. Employee may also be eligible for continued life insurance coverage at his own expense, though the decision on the portability of coverage, coverage type, and any requirements, is within the sole discretion of Unum and not the City. It is Employee's responsibility to timely complete any paperwork necessary to apply for continued life insurance coverage and all payments for any such coverage, if approved by Unum, are solely the responsibility of Employee.

7. Employee understands that he does not waive rights or claims that may arise after the date this Agreement is executed.
  
8. Following Employee's separation, in the event the City is a party to any litigation, grievance arbitration, or investigatory proceedings relating to events within Employee's knowledge that occurred during the time of his employment, Employee agrees to cooperate with the City and to assist the City and its counsel in connection with such litigation or investigatory proceedings either via an agreed-upon date or subpoena issued to Employee. The City will reimburse Employee for any out-of-pocket expenses (including travel expenses) and for time spent, at an hourly rate of (\$107.50) which is based on Employee's current salary incurred, by reason of such cooperation, provided such expenses and time are reasonable and are documented by proper receipts. Any work or assistance provided by the Employee on behalf of the City under this Paragraph shall be covered by Section 9- Indemnification of the Employment Contract which is incorporated by reference as if fully set forth in this Agreement.

9. Employee agrees to return all property or documents, including, but not limited to computers, keys, badges, manuals, letters, notes, reports, and memoranda relating directly to the City or City business and obtained by Employee during the period of his employment with the City that are in his possession or under his control. Employee also agrees that he will not retain copies of any City property or documents, with the exception of any documents to which he is otherwise entitled as part of his personnel file. Employee also agrees that he will never disclose or otherwise divulge, furnish, or make accessible to anyone, any confidential information, knowledge or data of the City, or that of its customers, residents, or suppliers, such as plans, pricing and financial data, personnel information, and any other information designated by the City as confidential.
10. Employee agrees not to institute, aid, or participate in any proceeding against or involving the City on behalf of any person or entity, unless subpoenaed. Furthermore, Employee agrees that he will neither take nor encourage any action that disparages the City or that in any way reflects negatively on the City's business operations or management. Likewise, the City agrees not to disparage the Employee in any way or make any statements, whether written or oral, that reflect negatively on the Employee.
11. Employee further certifies that he understands the Agreement, that it is entirely satisfactory, and that Employee signs it freely and voluntarily.
12. If it is determined by a court of competent jurisdiction that Employee violated this Agreement, Employee agrees that he will pay all costs, including reasonable attorneys' fees that the City may incur defending against a suit brought by Employee. Employee also acknowledges that in any such action filed by Employee, this Agreement may be pleaded by the City, both as a defense and as a counter-claim or cross claim in such action. Likewise, if it is determined by a court of competent jurisdiction that the City violated this Agreement, the City agrees that it will pay all reasonable and allocable costs, including reasonable attorneys' fees, that the Employee may incur enforcing the terms and conditions of the Agreement. The parties agree that, damages for breach of this Agreement are capped at

5,000 (except that any amounts to be paid within this Agreement are not included in such damages.)

13. This Agreement, and any dispute arising in connection with its operation or execution, shall be construed in accordance with and governed by the statutes and common law of the State of Michigan. If a court of competent jurisdiction determines that this Agreement is unenforceable in any respect, such determination shall not affect the validity or enforceability of the remaining provisions of this Agreement or affect the validity or enforceability of this Agreement in any other jurisdiction. The Employee and the City agree that if this Agreement or any provision of this Agreement is held by a court to be invalid or unenforceable because it is too broad in any respect, the Agreement or such provision shall be narrowed by the court to the extent required to be enforceable.
14. This Agreement reflects the entire agreement of the Parties relative to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written understandings, statements, representations or promises. Following execution of this Agreement, it may not be modified except in writing and signed by both the Employee and the City. The language of the Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against either of the Parties.
15. Employee certifies that: a) signing the Agreement is voluntary and that he understands the terms of the Agreement; b) that he has been advised by this document to consult with an attorney and, in fact, has consulted with an attorney before signing the Agreement; and c) that he is aware that he is entitled to 21 days to consider the Agreement but pursuant to the attached waiver, knowingly and voluntarily (after consultation with his attorney), agrees to waive his right to such 21-day period.
16. Employee may revoke this Agreement within 7 days (if the 7th day is a Saturday, Sunday, or a national holiday, Employee has until the next business day) after he signs the Agreement, by notifying the Mayor in writing. This Agreement is effective after such revocation period has expired.

WITNESS: \_\_\_\_\_

**EMPLOYEE:**

Date:

\_\_\_\_\_

\_\_\_\_\_

**CITY OF ANN ARBOR**

\_\_\_\_\_  
By: Mayor Christopher Taylor

\_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to form:

\_\_\_\_\_  
Stephen K. Postema

**VOLUNTARY WAIVER OF 21 DAY**  
**REVIEW AND CONSIDERATION PERIOD**

I UNDERSTAND THAT THE ATTACHED AGREEMENT WITH THE CITY OF ANN ARBOR (“ANN ARBOR”) DELIVERED TO ME ON \_\_\_\_\_, PROVIDES ME WITH A 21 DAY TIME PERIOD WITHIN WHICH TO CONSIDER THE AGREEMENT. BY SIGNING THIS WAIVER, I KNOWINGLY AND VOLUNTARILY CHOOSE TO WAIVE THE 21 DAY TIME PERIOD, AND UNDERSTAND THAT ALL PROVISIONS OF THE AGREEMENT CONTINUE TO APPLY TO ME.

THE DECISION TO SIGN THIS WAIVER WAS COMPLETELY VOLUNTARY AND IN SO DOING, I HAVE NOT RELIED ON ANY STATEMENT OR PROMISE MADE BY ANN ARBOR OR ITS REPRESENTATIVES.

\_\_\_\_\_  
EMPLOYEE NAME – PRINT

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
DATE