

SEPARATION AND SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Separation and Settlement Agreement and General Release ("Agreement") is entered into between, on the one hand, The City of Lago Vista, Texas ("The City"), and, on the other hand, Tracie Hlavinka, on behalf of herself and her heirs, executors, guardians, successors and assigns, and each of them, jointly and severally (herein singularly and collectively called "Ms. Hlavinka"), who agree to be bound by all of the terms and conditions hereof. (Together, Ms. Hlavinka and The City are referred to herein as the "Parties" to this Agreement.)

WHEREAS, the Parties desire to fully and completely settle and dispose of:

- (a) Ms. Hlavinka's alleged claims against The City set forth in the demand letter served by her counsel, Ronald E. Dupree of Dupree Law Firm, PLLC, dated August 29, 2024 (the "Demand") which claims the City categorically denies; and
- (b) any and all other claims of whatever kind or nature, which Ms. Hlavinka ever had or may now have against The City, its respective current and former Councilmembers, administrators, employees and agents (in their individual and representative capacities), (all of which are herein singularly and collectively called "the Releasees") up to the effective date of this Agreement relating to her employment with or separation from The City.

Ms. Hlavinka has also expressed a desire to resign her employment with the City to move on to other professional opportunities. Toward this end, The City agrees to pay Ms. Hlavinka, and Ms. Hlavinka agrees to accept, the monies and other consideration set forth in this Agreement for her waiver and release of the claims specified herein, and a mutually satisfactory resolution of her employment with the City.

1. Compensation and Payment. The City, subject to Ms. Hlavinka satisfying her obligations under this Agreement, and as consideration for those obligations, agrees to pay Ms. Hlavinka the gross sum of One Hundred Fifty-Eight Thousand Nine Hundred Thirteen Dollars (\$158,913.00) ("Settlement Sum"). Additionally, The City will pay:

- \$4,493.52 to cover the cost of six months of COBRA for Ms. Hlavinka from the effective date of her resignation, and to continue her insurance benefits (life, accident, health and medical), from the effective date of her resignation
- \$41,884.80 representing the liquidated value of 480 hours of accrued unused vacation, holidays, compensatory and sick time,
- \$5,000.00 towards the cost of Ms. Hlavinka's attorney's fees.

The Total Settlement Amount represents any and all damages, monies, and benefits to which Ms. Hlavinka may now or may hereafter be entitled from the Releasees. Payment of the Settlement Sum shall be issued as follows:

- a. A check in the amount of **\$55,619.55** (**Fifty-Five Thousand Six Hundred Nineteen Dollars and Fifty-Five Cents**), less applicable taxes and

withholdings, made payable to "Tracie Hlavinka," as settlement for Ms. Hlavinka's claim for alleged lost wages, for which a W-2 shall issue;

- b. A check in the amount of **\$55,619.55 (Fifty-Five Thousand Six Hundred Nineteen Dollars and Fifty-Five Cents)** made payable to "Tracie Hlavinka," as settlement of Ms. Hlavinka's claim for alleged non-waged based damages, including compensatory damages, for which a 1099 shall issue;
- c. A check in the amount of **\$47,673.90 (Forty-Seven Thousand Six-Hundred Seventy-Three Dollars and Ninety Cents)**, made payable to "Dupree Law Firm PLLC," for attorneys' fees and expenses, for which a 1099 shall issue.

Appropriate tax forms will be issued for the payments referenced above pursuant to the Internal Revenue Code and applicable regulations.

2. **Entire Amount of Monetary Consideration.** Ms. Hlavinka agrees that the Total Settlement Amount sets forth the entire amount of monetary consideration and benefits to which she is entitled from the Releasees and that she will not seek any further compensation or benefits of any kind or nature from the Releasees, including, but not limited to, wages, bonuses, benefits, back pay, front pay, vacation pay, severance, damages (whether compensatory or otherwise), costs or attorneys' fees, with respect to any matters or issues which were, or which could have been, raised up to the execution of this Agreement, whether known or unknown to Ms. Hlavinka at the time of execution of the Agreement.

3. **Liability for Taxes.** Ms. Hlavinka acknowledges and agrees that Releasees have made no representations to Ms. Hlavinka regarding the tax consequences of any amounts received by Ms. Hlavinka pursuant to this Agreement. In the event any taxing body determines that any amounts should have been withheld from the payments provided for in paragraph 1, Ms. Hlavinka acknowledges and assumes all responsibility for the payment of any such taxes and any associated interest and/or penalties and she hereby agrees to indemnify and hold Releasees harmless for the payment of such taxes, the failure to withhold, and any interest or penalties imposed thereon.

4. **Time for Payment.** The Settlement Sum specified in paragraph 1 of this Agreement shall be made within fourteen (14) days of the effective date this agreement as reflected in Section 8(e).

5. **Hlavinka Resignation.** Subject to the Promises and obligations reflected in this agreement, Ms. Hlavinka agrees to tender her resignation from the City with an effective date of fourteen (14) days after the City tenders all payments reflected in this agreement. The Parties further agree to waive any requirement to conduct a 2024 performance evaluation of Ms. Hlavinka.

6. **Representations and Warranties.** Ms. Hlavinka represents and warrants that, other than the alleged claims in the Demand, she has no other pending charges, claims, suits, or complaints against the Releasees with any federal, state, local or other governmental agency, or in any court of law. Ms. Hlavinka further represents and warrants that she has not assigned to any

other person or entity, and that no other person or entity is entitled to assert on her behalf, any claim against any of the Releasees based on matters released in this Agreement. Ms. Hlavinka further represents, warrants, covenants, and agrees that no person, firm, or other entity has asserted, currently asserts, or to her knowledge will assert, a lien or claim of lien with respect to any claims, demands, actions, or causes of action, whether asserted or unasserted, that are being released by Ms. Hlavinka in this Agreement. In the event any person or entity asserts any claim or matter released by Ms. Hlavinka in this Agreement, Ms. Hlavinka shall indemnify and hold the Releasees harmless for any such claims asserted.

7. **Ms. Hlavinka's Release of Claims and Covenant Not to Sue.** Ms. Hlavinka, for herself and her heirs, beneficiaries, representatives, assigns, and agents acquits, releases, holds harmless, and forever discharges the Releasees of and from all, and in all manner of, debt, obligation, demand, cause of action, claim for relief, judgment, controversy or claim of any kind she has or may have against Releasees, which she ever had or may now have with respect to her employment with The City, with respect to any matters or issues which were, or which could have been, raised up to the execution of this Agreement, whether known or unknown to Ms. Hlavinka, at the time of execution of this Agreement. This includes, but is not limited to, alleged claims asserted in the Demand; contract claims; claims for salary, benefits, bonuses, severance pay, or vacation pay; claims or causes of action pertaining to any and all negligence and tort claims; all matters in law, in equity, or pursuant to statute, including damages, attorneys' fees, costs and expenses, and, without limiting the generality of the foregoing, to all claims arising under the Age Discrimination in Employment Act ("ADEA"), Title VII of the Civil Rights Act of 1964, The Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, the Americans with Disabilities Act, ("ADA"), the Equal Pay Act, the Family and Medical Leave Act ("FMLA"), Chapters 21 and 451 of the Texas Labor Code, the Employee Retirement Security Act, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"), the Texas Whistleblower Act, Chapter 554 of the Texas Government Code, and all other federal, state, or local laws, ordinances, rules, regulations, and orders; constitutional provisions; breach of promise; misrepresentation; fraud; estoppel; detrimental reliance; retaliation for the exercise of any constitutionally protected or employee rights; defamation; constructive discharge or wrongful discharge; and other common law, and any and all other claims that were ever made the basis of, or could have been made the basis of, any claims against the Releasees in any legal proceeding (collectively, "Claims"). Ms. Hlavinka agrees that: she has received all compensation due her as a result of services performed for The City with the receipt of her final paycheck; she has reported to The City any and all known or unknown work-related injuries or known or unknown occupational disease incurred by her during her employment by The City; she has been properly provided any leave requested under the FMLA or similar state local laws and has not been subjected to any improper treatment, conduct or actions due to a request for or taking such leave; she has had the opportunity to provide The City with written notice of any and all concerns regarding suspected ethical and compliance issues or violations on the part of The City or any other released person or entity. **It is expressly agreed and understood by Ms. Hlavinka that this release is a general release. Ms. Hlavinka also agrees and covenants not to file suit against the Releasees for any Claims covered by this Release of Claims, nor will she personally initiate, prosecute, direct, recommend, or maintain any action or proceeding against Releasees.**

This Agreement does not apply to any claims or rights that may arise after the date that Ms. Hlavinka signs this Agreement or to claims that the controlling law clearly states may not be

released by settlement.

Nothing in this Agreement, including but not limited to the paragraphs on compensation and payment (1), release (7), and representations and warranties (6), prevents Ms. Hlavinka from participating in any investigation or proceeding initiated by another party wherein the Equal Employment Opportunity Commission, and/or any governmental authority charged with the enforcement of any laws affecting the City conducts an investigation or administrative proceeding. Ms. Hlavinka expressly agrees not to accept from any other source any remuneration beyond that described in this Agreement with respect to claims that have been released by this Agreement.

8. Release of Claims Under the ADEA.

- a. Ms. Hlavinka, in consideration of the promises, payments, and undertakings of City set forth in this Agreement, agrees that this Agreement constitutes a knowing and voluntary waiver of all rights or claims which she has or may have against the Releasees arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), 29 U.S.C. §§ 621 et seq., including, but not limited to, claims of age discrimination in employment and all claims of retaliation in violation of the ADEA.
- b. Ms. Hlavinka and the City agree that, by entering into this Agreement, Ms. Hlavinka does not waive rights or claims under the ADEA that may arise after the date this Agreement is executed.
- c. Ms. Hlavinka represents and warrants that the City informed her that she may take up to twenty-one (21) days to consider this Agreement, and that twenty-one (21) days is a reasonable period of time within which to consider this Agreement and is sufficient for her to do so.
- d. Ms. Hlavinka and the City agree that for a period of seven (7) days following the execution of this Agreement, Ms. Hlavinka has the right to revoke the Agreement and that to do so she must provide notice of her written revocation to the City via its City Attorney, and that seven (7) days is a reasonable period of time within which to exercise that right, should Ms. Hlavinka choose to do so.
- e. Ms. Hlavinka and the City further agree that this Agreement shall not become effective or enforceable until the revocation period of seven (7) days has expired.
- f. The City has advised Ms. Hlavinka to consult with an attorney prior to executing this Agreement, and Ms. Hlavinka represents that she has done so.
- g. Ms. Hlavinka's acceptance of the payment(s) described in this Agreement at any time more than seven (7) days after the execution of this Agreement shall constitute an admission by Ms. Hlavinka that she did not revoke this Agreement during the seven-day revocation period. Such acceptance shall further constitute an admission by Ms. Hlavinka that this Agreement has become effective and enforceable.

9. Adequacy of Consideration. Ms. Hlavinka acknowledges and agrees that the covenants and promises made in this Agreement are in consideration of the payment and other promises made hereunder, and that but for the execution of this Agreement releasing claims, Ms.

Hlavinka would not be entitled to the agreed amount being paid or any promises being made to her hereunder.

10. **Non-Admission of Liability.** Ms. Hlavinka agrees that: (a) neither this Agreement nor compliance with its terms shall be construed as an admission by the Releasees of a violation of any statute or a violation of any contractual, quasi-contractual, common law or other right, including, but not limited to, the alleged claims made in the Demand which claims Releasees categorically deny; and (b) neither this Agreement nor the fact of its delivery to Ms. Hlavinka shall be admissible in any proceeding as evidence of unlawful or improper conduct by the Releasees, with the sole exception of any claim that Ms. Hlavinka or the Releasees breached their commitments under this Agreement.

11. **MMSEA Disclosure.** This Agreement is based upon a good faith determination of the Parties to resolve disputed claims. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. § 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms.

Ms. Hlavinka represents and warrants that she is not aware of any Medicare conditional payments that have been made on her behalf. Ms. Hlavinka will indemnify, defend and hold the Releasees harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown.

Ms. Hlavinka warrants that she is not a Medicare beneficiary as of the date of this Agreement. Because Ms. Hlavinka is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made by Medicare.

The Parties acknowledge and understand that any present or future action or decision by Medicare on this settlement, or Ms. Hlavinka's eligibility or entitlement to Medicare or Medicare payments, will not render this Agreement void or ineffective, or in any way affect the finality of the terms of this Agreement.

12. **Effect of Provision Being Held Unlawful or Unenforceable.** In the event that any provision of this Agreement is found, by any court or governmental agency, to be unlawful or unenforceable, the remaining provisions of this Agreement shall continue in effect.

13. **Modification and Waiver.** This Agreement shall not be changed, modified, terminated, canceled or amended except by a written instrument signed by the Parties hereto.

14. **Counterparts.** This Agreement may be signed in multiple counterpart copies, each of which shall be considered an original and all of which shall be deemed to be one and the same Agreement. This Agreement may be executed and delivered by facsimile and electronic transmission.

15. **Joint Preparation of Agreement.** This Agreement shall not be construed against any party but shall be construed as if it were prepared jointly by the Parties. Any uncertainty or ambiguity, or both, shall not be interpreted against any person or entity.

16. **Entire Agreement.** No promise, inducement or agreement not described in this Agreement has been made in connection with this Agreement. This Agreement constitutes the entire agreement between the Parties. This Agreement supersedes any and all other agreements and negotiations, whether oral or in writing.

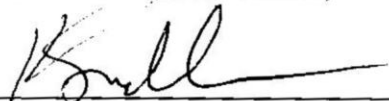
17. **Governing Law; Personal Jurisdiction.** The Parties agree that: (a) this Agreement is governed by the laws of Texas, without giving effect to its conflict of law principles; (b) they hereby consent to personal jurisdiction in the state courts of and federal courts of Texas for adjudication of all claims arising from and related to this Agreement.

TRACIE HLAVINKA UNDERSTANDS AND AGREES THAT SHE MAY BE WAIVING SIGNIFICANT LEGAL RIGHTS BY SIGNING THIS AGREEMENT AND REPRESENTS THAT SHE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL AND WITH A FULL UNDERSTANDING OF AND IN AGREEMENT WITH ALL OF ITS TERMS.

The Parties to this Agreement indicate their acceptance by their signature below:

THE CITY OF LAGO VISTA, TEXAS

TRACIE HLAVINKA

By: 

By: DocuSigned by:
Tracie Hlavinka
E9DE56884462473...

Title: MAYOR

Dated: 10/4/2024

Dated: 10/4/2024