



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

Date: July 17, 2019

To: Honorable Mayor and City Council Members

From: Mark F. Miller, City Manager  
Lori Grigg Bluhm, City Attorney

Subject: Proposed Severance Agreement

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The City separated employment with Financial Services Director Tom Darling effective July 16, 2019. Believing it to be in the best interest of the City, City Administration asked our outside labor counsel to prepare the attached Severance and Release Agreement in anticipation of this separation. A copy was provided to Mr. Darling during the separation meeting on July 15. Section 6 of the proposed agreement requires the City to provide a neutral employment reference, and this public agenda memorandum was prepared in recognition of this obligation.

The Age Discrimination in Employment Act (“ADEA”) requires a 21 day review period for former employees to consider such agreements. This period may be shortened if the former employee knowingly and voluntarily waives it in writing. The ADEA also requires a seven day revocation period which cannot be waived.

If both the Troy City Council and the former Financial Services Director approve the proposed agreement, the City will be released from all potential claims and this matter will be concluded. If not, the former employee may seek any other remedy available by law.

A proposed resolution is attached for your consideration and is recommended by City Administration. Please let us know if you have any questions concerning this matter.

## SEVERANCE AND RELEASE AGREEMENT

This Severance and Release Agreement (“Agreement”) is made and entered into by and between Thomas Darling (“Employee”) of 219 E. Caledonia, Howell, Michigan 48843, and the City of Troy (“City”) of 500 West Big Beaver Road, Troy, Michigan 48084.

WHEREAS, Employee is separated from employment with the City effective July 16, 2019, (“Severance Date”); and

WHEREAS, Employee and City desire to resolve any potential claims relating to the employment of Employee by City, in accordance with certain conditions, terms and responsibilities described more fully below;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein by reference and are part of this Agreement.

2. **Consideration for Signing.** In full release and settlement of all potential claims of Employee (such release more fully described in paragraph 4 below), Employee shall receive the following:

- a. Payment of \$72,227.50, (“Severance Amount”), which represents one half of Employee’s annual salary. Payment of the Severance Amount shall be subject to deductions for all of Employee’s usual and applicable payroll and tax withholdings and deductions under federal, state and local law and contributions to all ICMA-RC retirement plans in which Employee participates based on Employee’s current contribution allocations;
- b. Payment of \$22,953.06, which represents 220 hours of Employee’s accrued but unused vacation time in the amount of \$15,278.89 and 110.50 hours of Employee’s compensatory time in the amount of \$7,674.17. This payment shall be subject to deductions for all of Employee’s usual and applicable payroll and tax withholdings and deductions under federal, state and local law and contributions to all ICMA-RC retirement plans in which Employee participates based on Employee’s current contribution allocations; and
- c. Payment by the City of the COBRA premium for the continuation of medical benefits for Employee and his spouse through December 15, 2019, after which date, the City shall have no responsibility for or duty to pay this premium. In order to trigger this payment, Employee must execute all forms necessary for COBRA coverage to begin, no later than the date set forth in the COBRA letter you will receive from the City.
- d. The amounts set forth in subparagraph 2.a above will be paid to Employee on the next regular pay day for the pay period following Employee’s

execution of this Agreement, expiration of the seven-day revocation period set forth in paragraph 3 of this Agreement, Employee's return of all property referenced in paragraph 5 below, and approval by City Council of the severance amount. Subject to all above-referenced approvals, the Severance Amount shall be deposited into Employee's checking account via direct deposit.

3. **Opportunity for Review and Revocation.** Employee shall have twenty-one (21) days from the date of receipt of this Agreement to review it (which period may be shortened if Employee knowingly and voluntarily waives it in writing) and shall have the right, within seven (7) days of signing this Agreement, to revoke it. Employer agrees and Employee understands that Employee does not waive any rights or claims that may arise after the date this Agreement is executed. Employee further acknowledges that execution of this Agreement is voluntary and that Employee has been advised to consult with an attorney or advisor before executing it, to ensure that Employee fully and thoroughly understands its legal significance.

4. **Release.** For and in consideration of the consideration described in paragraph 2 of this Agreement, that being good and valuable consideration, Employee, on behalf of himself, his heirs, executors, administrators, attorneys, legal and personal representatives and assigns, hereby forever releases and discharges the City and its agents, attorneys, officers, employees, servants, insurers, representatives, trustees, council members, divisions, departments, courts, related municipalities or authorities or successor municipalities or authorities, heirs, successors or assigns, and each of them, from any and all debts, obligations, claims, demands, judgments, or causes of action of any kind whatsoever, whether known or unknown, including but not limited to any and all claims, demands, rights, and/or causes of action arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, as amended, the Americans With Disabilities Act of 1990, as amended, the Elliott-Larsen Civil Rights Act, as amended, the Michigan Persons with Disabilities Civil Rights Act, as amended, the Michigan Whistleblower's Protection Act, Michigan's Public Employment Relations Act, the Labor Management Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Family Medical Leave Act, the Age Discrimination in Employment Act and any other federal, state, or local statute, regulation, ordinance or any other claim, whether statutory or based on common law and whether arising: (1) by reason of his employment with the City or the cessation of that employment or circumstances related thereto; or (2) by reason of any other matter, cause, or thing whatsoever, arising prior to the date of execution of this Agreement, as well as any claim for costs or attorney fees, including those that might have been available under 42 USC 1988, MCL 15.364 or any other statute, court rule, regulation or union contract, and all other claims and grievances, including claims regarding retirement benefits.

5. **No Additional Benefits.** Employee acknowledges and agrees that he shall receive no benefits, bonuses or any other compensation in addition to that set forth in paragraph 2 of this Agreement including, but not limited to, life insurance, health insurance, disability insurance, retirement plan matching contributions, defined benefit contributions, or payments for vacation, personal time and/or any other leave that has not been utilized, other than that specifically set forth in paragraph 2 of this Agreement. Prior to the City's payment of the Severance Amount set forth in paragraph 2.a of this Agreement, employee must return all City

property in his possession, including one ID badge, one laptop, one Surface tablet, and two door keys. Employee shall turn in his annual mileage report no later than July 29, 2019.

6. **No Subsequent Employment.** Employee agrees not to apply for or otherwise seek re-employment with the City subsequent to the Severance Date. This Agreement shall be considered a legitimate and non-discriminatory reason to support the City's refusal to employ Employee in the future. The City shall provide only a neutral employment reference relating to Employee's employment with the City, including his dates of employment, rate of pay and position held. All requests for such references shall be directed only to the City's Human Resource Director.

7. **Cooperation.** Employee agrees to provide support and cooperation to the City for a period of six months from the separation date, including but not limited to provision of all City banking and other account access information in his possession and to respond to questions or requests for information during the transition of Employee's job duties.

8. **Non-Disparagement.** Employee agrees that he shall not verbally or in writing by any means to any other person or entity, including without limitation past, present, or future employees, agents, or associates of the City, disparage, criticize, condemn, or impugn the reputation or character of the City and/or its agents, officers, directors and employees, based upon any event relating to his employment with the City or any other circumstances occurring or existing prior to or on the date of this Agreement.

9. **Current Address.** Employee shall inform the City in writing of any changes to his address and phone number, so that the City may provide him with information regarding his earnings and other information as required by law.

10. **No Admission of Liability.** This Agreement shall never be treated as an admission of liability or responsibility at any time or in any manner whatsoever by any party to this Agreement.

11. **Waiver.** The waiver of any breach of any provision of this Agreement shall not constitute a waiver of any prior, concurrent or subsequent breach or any other provision of this Agreement.

12. **Good Faith.** This Agreement is considered by the undersigned to be fair, equitable and made in good faith by all parties concerned.

13. **Consideration.** Employee specifically acknowledges that, as a result of this Agreement he will receive sums of money and other things of value which he would not otherwise have received except solely as a result of entering into this Agreement with the City, and that such money and other things constitute valuable consideration given by the City in return for the promises and commitments which Employee makes herein to the City.

14. **Benefit.** This Agreement shall inure to the benefit of and bind the parties' respective agents, heirs, personal representatives or executors, administrators, successors and assigns.

15. **Entire Agreement/Severability.** The invalidity of any provisions of this

Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision herein. The terms of this Agreement are contractual and not a mere recital. It is further understood and agreed that no promises, representations, understandings or warranties have been made or extended by any party hereto other than those which are expressly set forth in this Agreement, and that this Agreement contains the entire agreement between the parties relating to the rights and obligations referenced herein. Employee's execution of this Agreement shall nullify and void any and all other written or verbal agreements between the parties.

16. **Jurisdiction and Governing Law.** The parties agree to submit to the jurisdiction of a Michigan state court or a federal district court sitting in Michigan (in the event that the jurisdiction of a federal court is appropriate), with respect to all claims arising out of this Agreement. Employee further agrees that regardless of where she may reside, process may be served on him with respect to any such proceeding in accordance with the provisions of the Michigan Court Rules or Federal Rules of Civil Procedure regarding service and process. This Agreement shall be governed by and construed in accordance with the procedural and substantive laws of the State of Michigan without reference to Michigan's choice of law principles. Employee agrees to pay to Troy all damages and attorney fees resulting from her violation of this Agreement.

17. **Amendments.** Any modification, alteration or amendment to this Agreement shall be void and have no force or effect unless it is in writing and signed on behalf of each of the parties.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

19. **Taxes.** The City cannot, has not, and does not, provide any tax advice to Employee in connection with this Agreement. Employee has had the opportunity to seek the advice of his own personal tax advisors/accountants and has relied upon that advice and/or his own advice in executing this Agreement.

20. **City Council Approval.** Employee understands and acknowledges that the severance payment set forth in paragraph 2.a of this Agreement is subject to approval by the City Council through a vote of the Council. If the City Council does not approve the severance amount, the severance payment set forth in paragraph 2.a of this Agreement and the release set forth in paragraph 4 of this Agreement shall be null and void. All other provisions of this Agreement shall remain fully enforceable and Employee's termination shall in no way be impacted by the City Council's vote.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

**Employee acknowledges that he has read this Agreement, understands its terms and enters into it voluntarily.**

Signed, sealed, and delivered the \_\_\_\_ day of \_\_\_\_\_, 2019.

Witness: \_\_\_\_\_

\_\_\_\_\_  
**Thomas Darling**

SUBSCRIBED AND SWORN  
to before me this \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
NOTARY PUBLIC

**The City Manager, acting under authority of the City’s governing body has caused this Agreement to be duly executed as of the day and year first above written, which is the Agreement Date.**

Witness: \_\_\_\_\_

\_\_\_\_\_  
**Mark Miller**

SUBSCRIBED AND SWORN  
to before me this \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
NOTARY PUBLIC

**WAIVER OF TWENTY-ONE DAY PERIOD UNDER ADEA**

I, Thomas Darling, hereby waive the twenty-one (21) day consideration period under the Age Discrimination in Employment Act (“ADEA”). This waiver is knowing and voluntary and is not induced by fraud, misrepresentation or threat to withdraw or alter any offer made to me prior to the expiration of the twenty-one (21) day period. Accordingly, I request that the processing of the consideration provided for in the attached document entitled Severance and Release Agreement (the “Agreement”) be expedited.

I also understand that the seven (7) day revocation period cannot be shortened and that I have the right to revoke the Agreement within seven days following my execution of the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Darling, Employee

SUBSCRIBED AND SWORN  
to before me this \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
NOTARY PUBLIC