

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the “Agreement”) is entered into by and between **the City of Fayetteville** (referred to throughout this Agreement as “the City”) and **Gina V. Hawkins** (“Ms. Hawkins”). The term “Party” or “Parties” as used herein shall refer to the City, Ms. Hawkins, or both, as may be appropriate.

1. Recitals.

This Agreement is made with reference to the following facts:

- (a) Ms. Hawkins was formerly employed by the City;
- (b) Ms. Hawkins’ last day of employment with the City was January 31, 2023 (“Separation Date”);
- (c) On or about August 4, 2023, Ms. Hawkins sent the City a demand letter (“Demand Letter”), alleging that the City created a hostile work environment based on her race and gender; and
- (d) There has been no determination on the merits of the Demand Letter and the City and Releasees deny any and all liability; however, in order to avoid additional cost and the uncertainty of litigation, Ms. Hawkins and the City have agreed to resolve any and all claims, known and unknown, asserted and unasserted, which Ms. Hawkins has or may have against the City and/or the City’s direct and indirect past, present, and future parent corporation, affiliates, subsidiaries, partners, divisions, predecessors, insurers, reinsurers, risk pools, professional employment organizations, representatives, successors, and assigns, and its current and former elected officials, and its current and former employees, attorneys, officers, owners, members, managers, directors, and agents thereof, and its employee benefit plans and programs and its administrators and fiduciaries, both individually and in their official and/or business capacities (collectively referred to throughout the remainder of this Agreement as “Releasees”) as of the date of execution of this Agreement.

2. Consideration/Indemnification for Tax Consequences and Liens.

(a) In consideration for Ms. Hawkins signing this Agreement, and complying with its terms, the City agrees to pay the total gross sum of Two Hundred Thousand and 00/100 DOLLARS (\$200,000.00) (the “Settlement Payment”), to be allocated as follows:

(1) One payment for alleged emotional distress, liquidated and/or other non-wage damages by check made payable to “Gina V. Hawkins” in the amount of One Hundred Forty Thousand and 00/100 dollars (\$140,000.00), for which the City shall issue an IRS Form 1099-MISC to Ms. Hawkins; and

(2) One payment for alleged attorneys’ fees and costs by check made payable to “Hairston Lane, P.A.” (“Ms. Hawkins’ Counsel”) in the amount of Sixty Thousand and 00/100 dollars (\$60,000.00) for which an IRS Form 1099-MISC shall be issued to each of Ms. Hawkins and Ms. Hawkins’ Counsel.

(b) Ms. Hawkins agrees that she is responsible for all applicable taxes, if any, as a result of the receipt of these monies in Paragraph 2(a). Ms. Hawkins understands and agrees the City is providing Ms. Hawkins with no representations regarding tax obligations or consequences that may arise from this Agreement. Ms. Hawkins, for Ms. Hawkins and Ms. Hawkins' dependents, successors, assigns, heirs, executors, and administrators (and Ms. Hawkins' legal representatives of every kind), agrees to indemnify and hold the Releasees harmless for the amount of any taxes, penalties, or interest that may be assessed by any governmental tax authority against any of the Releasees in connection with such governmental authority's determination that the City or any of the other Releasees was required to, but failed to, withhold or report the correct amount of income or employment taxes from the payments made to Ms. Hawkins or Ms. Hawkins' Counsel pursuant to Paragraph 2(a) of this Agreement. Ms. Hawkins agrees that she shall indemnify the Releasees for the full amount of such liability within thirty (30) days after receipt of notice from the City or any of the other Releasees of the assessment of such taxes, penalties, or interest.

(c) Any settlement payments made by check set forth in this paragraph will be delivered to Ms. Hawkins' Counsel at Hairston Lane, P.A., c/o James E. Hairston, Jr., 434 Fayetteville Street, Suite 2350, Raleigh, NC 27601.

3. No Consideration Absent Execution of this Agreement.

Ms. Hawkins understands and agrees that she would not receive the monies and/or benefits specified in this Agreement, except for Ms. Hawkins' timely execution of this Agreement and the fulfillment of the promises contained herein.

4. Disbursal of Settlement Funds/Dismissal of Action.

(a) The settlement payments described in Paragraph 2(a) will be sent within thirty (30) business days after the latest of the following have occurred:

- (1) counsel for the City receives a copy of this Agreement signed by Ms. Hawkins;
- (2) counsel for the City receives an executed W-9 Form from Ms. Hawkins' Counsel; and
- (3) counsel for the City receives an executed W-9 Form from Ms. Hawkins.

5. General Release, Claims Not Released and Related Provisions.

(a) **General Release of All Claims.** Ms. Hawkins and Ms. Hawkins' heirs, executors, administrators, successors, and assigns knowingly and voluntarily release and forever discharge Releasees, of and from any and all claims, known and unknown, asserted or unasserted, which Ms. Hawkins has or may have against Releasees as of the date of execution of this Agreement, including, but not limited to, any alleged violation of the following, as amended:

- Title VII of the Civil Rights Act of 1964;
- Sections 1981 through 1988 of Title 42 of the United States Code;

- The Employee Retirement Income Security Act of 1974 (“ERISA”);
- The Internal Revenue Code of 1986;
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;
- The Worker Adjustment and Retraining Notification Act;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Genetic Information Nondiscrimination Act of 2008;
- The Age Discrimination in Employment Act of 1967 (“ADEA”);
- The Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”);
- Families First Coronavirus Response Act;
- The Pregnant Worker’s Fairness Act (“PWFA”)
- any other federal, state, or local law, rule, regulation, or ordinance;
- any public policy, contract, tort, or common law; or
- any basis for recovering costs, fees, or other expenses including attorneys’ fees incurred in these matters.

(b) **Claims Not Released.** Ms. Hawkins is not waiving any rights she may have to: (i) Ms. Hawkins’ own vested or accrued employee benefits under the City’s qualified retirement benefit plans as of the Separation Date; (ii) benefits and/or the right to seek benefits under applicable workers’ compensation and/or unemployment compensation statutes; (iii) pursue claims which by law cannot be waived by signing this Agreement; or (iv) enforce this Agreement.

(c) **Governmental Agencies.** Nothing in this Agreement prohibits, prevents, or otherwise limits Ms. Hawkins from filing a charge or complaint with or participating, testifying, or assisting in any investigation, hearing, or other proceeding before any federal, state, or local government agency or in any legislative or judicial proceeding nor does anything in this Agreement preclude, prohibit or otherwise limit, in any way, Ms. Hawkins’ rights and abilities to contact, communicate with or report unlawful conduct to federal, state, or local officials for investigation or participate in any whistleblower program administered by any such agencies. However, to the maximum extent permitted by law, Ms. Hawkins agrees that if such an administrative claim is made, she shall not be entitled to recover any individual monetary relief or other individual remedies.

(d) **Collective/Class Action Waiver and Jury Waiver.** If any claim is not subject to release, to the extent permitted by law, Ms. Hawkins waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which the City or any other Releasee identified in this Agreement is a party. Similarly, as to any such claim against any Releasee that is not otherwise released, Ms. Hawkins waives Ms. Hawkins’ right to a jury trial to the full extent allowed by applicable law.

6. Acknowledgements and Affirmations.

(a) Ms. Hawkins affirms that Ms. Hawkins has not filed, caused to be filed, or presently is a party to any claim against the Releasees. Nothing in this Agreement or these Affirmations is

intended to impair Ms. Hawkins' rights under whistleblower laws or cause Ms. Hawkins to disclose Ms. Hawkins' participation in any governmental whistleblower program or any whistleblowing statute(s) or regulation(s) allowing for anonymity.

(b) Ms. Hawkins also affirms that Ms. Hawkins has been paid and/or has received all compensation, wages, bonuses, commissions, paid sick leave, predictability pay, and/or benefits which are due and payable as of the date Ms. Hawkins signs this Agreement and Ms. Hawkins has been reimbursed for all necessary expenses or losses incurred by Ms. Hawkins within the scope of Ms. Hawkins' employment. Ms. Hawkins further affirms that Ms. Hawkins has submitted expense reports for all necessary expenses or losses incurred by Ms. Hawkins within the scope of Ms. Hawkins' employment.

(c) Ms. Hawkins affirms that Ms. Hawkins has been granted any leave to which Ms. Hawkins was entitled under the Family and Medical Leave Act and state and local leave and disability accommodation laws.

(d) Ms. Hawkins specifically covenants not to file any claim or suit against Releasees, including but not limited to any ethics inquiries with the City or against Releasees which in any way relate to or arise out of the time period of her employment with the City and this covenant is a material term of this Agreement. Ms. Hawkins' only claim against Releasees, after the date of this Agreement, shall be for breach of this Agreement and any such claim shall be limited to the monetary consideration paid under this Agreement.

(e) Ms. Hawkins further affirms that Ms. Hawkins has no known workplace injuries or occupational diseases.

(f) Ms. Hawkins also affirms that Ms. Hawkins has not divulged any proprietary or confidential information of the City, including but not limited to personnel information made confidential by North Carolina Statute to which she was privy during her employment with the City, and that she will continue to maintain the confidentiality of such information consistent with the City's policies and applicable law.

(g) Ms. Hawkins further affirms that Ms. Hawkins has not reported internally to the City any allegations of wrongdoing by the City or any of the Releasees and Ms. Hawkins has not been retaliated against for reporting or objecting to any such allegations internally to the City.

(h) Ms. Hawkins shall not apply for, or accept, employment or other work engagement with the City or any Releasee under any circumstances because of, among other things, irreconcilable differences with the City. Ms. Hawkins agrees that, if Ms. Hawkins accepts employment or other work engagement with the City or any other Releasee in contravention of this Agreement, the City and/or such Releasee may terminate Ms. Hawkins' employment or work engagement immediately and Ms. Hawkins shall have no claim against the City or such Releasee, in law or equity, related to such termination (to the fullest extent permitted by law).

(i) Ms. Hawkins affirms that all of the City's decisions regarding Ms. Hawkins' pay and benefits through the date of Ms. Hawkins' execution of this Agreement were not discriminatory based on age, disability, race, color, sex, religion, national origin, or any other

classification protected by law, except as alleged in the Demand Letter or Other Informal Complaint and which claims are expressly released in Paragraph 5(a) above.

(j) Ms. Hawkins and the City acknowledge Ms. Hawkins' rights to make truthful statements or disclosures required by law, regulation, or legal process and to request or receive confidential legal advice, and nothing in this Agreement shall be deemed to impair those rights.

7. Return of Property.

Except as provided otherwise in this Agreement or by law, Ms. Hawkins affirms that Ms. Hawkins has returned all of the City's property, documents, and/or any confidential information in Ms. Hawkins' possession or control.

Ms. Hawkins also affirms that Ms. Hawkins is in possession of all of Ms. Hawkins' property that Ms. Hawkins had at the City's premises and that the City is not in possession of any of Ms. Hawkins' property.

8. Cooperation.

Ms. Hawkins agrees to reasonably cooperate with the City in regard to the transition of matters handled by Ms. Hawkins during her employment with the City and/or in regard to any litigation brought by or against the City in which Ms. Hawkins was involved or of which Ms. Hawkins has knowledge as a result of Ms. Hawkins' employment with the City.

Ms. Hawkins agrees to refrain from making statements that are disparaging, demeaning or defamatory about Releasees, or Releasees' employees, current and former elected officials or vendors, including but not limited to communications on social media websites such as Facebook, Twitter, LinkedIn, or Glassdoor on blogs, by text or email or other electronic means. This provision shall not be interpreted to prohibit Ms. Hawkins from exercising legitimate rights to free speech on matters of public concern so long as those statements are not otherwise a violation of this agreement.

The City will instruct all City Council Members, including outgoing Council Members, to not disparage or otherwise communicate any information that is or reasonably could be harmful to Ms. Hawkins' reputation. Nothing in this provision prohibits the City from making truthful statements to any Court or governmental authority or as otherwise required or permitted by law. Unless otherwise expressly authorized by Ms. Hawkins in writing, in the event of inquiries or references concerning Ms. Hawkins, the City shall state her job capacities, that she resigned voluntarily, and any other information which is considered public record under North Carolina law. All requests for oral references shall be directed to the Human Resource Development department or to the City Manager's Office.

9. Claw Back and Liquidated Damages

If Ms. Hawkins breaches any aspect of this Agreement, the breach(es) shall be deemed to constitute a material breach of the Agreement and (a) Ms. Hawkins shall return to the City 90% of the payments made pursuant to Paragraph 2 above; (b) Ms. Hawkins shall not be entitled to any

outstanding consideration; (c) Ms. Hawkins shall pay the reasonable attorney fees, costs, and damages incurred by Releasees as a result of or to take action in response to the breach(es); and (d) all other provisions in this Agreement, including Ms. Hawkins' release of claims shall remain in full force and effect. Further, Ms. Hawkins remains subject to any additional damages for breach as permitted by law.

It is further agreed that in the event of a breach by Ms. Hawkins of this Agreement, it would be impractical or extremely difficult to fix actual damages to the City or any of the Releasees because of their indefiniteness and uncertainty. Therefore, Ms. Hawkins agrees that in the event of such a breach, Ms. Hawkins shall pay to the City, as liquidated damages, and not as penalty, the sum of one thousand and 00/100 dollars (\$1,000.00) per breach, which represents an amount reasonably proportionate to the damages which have been caused by Employee's breach.

10. Medicare Affirmation.

Ms. Hawkins affirms that as of the date she signs this Agreement, she is not Medicare eligible (i.e., is not 65 years of age or older; is not suffering from end stage renal failure; has not received Social Security Disability Insurance benefits for 24 months or longer, etc.). Nonetheless, if the Centers for Medicare & Medicaid Services (CMS) (this term includes any related agency representing Medicare's interests, as well as any insurance carrier providing benefits under Medicare Part C or Part D) determines that Medicare has an interest in the payment to Ms. Hawkins under this settlement, Ms. Hawkins agrees to (i) indemnify, defend and hold Releasees harmless from any action by CMS relating to medical expenses of Ms. Hawkins, (ii) reasonably cooperate with Releasees upon request with respect to any information needed to satisfy the reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim that the CMS may make and for which Ms. Hawkins is required to indemnify Releasees under this paragraph, and (iii) waive any and all future actions against Releasees for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

11. Governing Law and Interpretation.

This Agreement shall be governed and conformed in accordance with the laws of North Carolina without regard to its conflict of laws provision. In the event of a breach of any provision of this Agreement, either Party may institute an action specifically to enforce any term or terms of this Agreement and/or to seek any damages for breach. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Should a court declare or find the general release in this Agreement to be unenforceable for any reason, Ms. Hawkins agrees to sign a replacement release in a form provided by the City.

12. Nonadmission of Wrongdoing.

The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Releasees of wrongdoing or evidence of any liability or unlawful conduct of any kind.

13. Amendment.

This Agreement may not be modified, altered, or changed except in writing and signed by both Parties wherein specific reference is made to this Agreement.

14. Entire Agreement.

This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties. Ms. Hawkins acknowledges that she has not relied on any representations, promises, or agreements of any kind made to her in connection with her decision to accept this Agreement, except for those set forth in this Agreement.

15. Counterparts and Signatures.

This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Agreement or a signature transmitted by facsimile or electronic mail, or which is made electronically, will have the same effect as the original signature.

16. Mutual Negotiation.

This Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity, or uncertainty, this Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly.

17. Third Party Beneficiaries.


All Releasees are third party beneficiaries of this Agreement for purposes of the protections offered by this Agreement, and they shall be entitled to enforce the provisions of this Agreement applicable to any such Releasee as against Ms. Hawkins or any party acting on Ms. Hawkins' behalf.

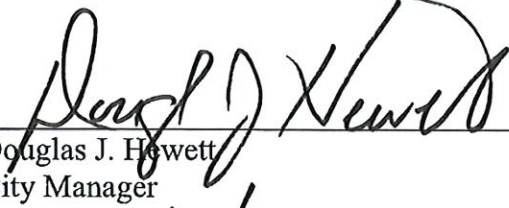
MS. HAWKINS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS MS. HAWKINS HAS OR MIGHT HAVE AGAINST RELEASEES.

The Parties knowingly and voluntarily sign this Agreement as of the date(s) set forth below:

GINA V. HAWKINS

THE CITY OF FAYETTEVILLE

By: 

By: 
Douglas J. Hewett
City Manager

Print Name: Gina V. Hawkins

Date: 12/11/23

Date: 12/4/2023

THIS INSTRUMENT HAS BEEN PREAUDITED IN
THE MANNER REQUIRED BY THE LOCAL
GOVERNMENT BUDGET AND FISCAL CONTROL ACT.
