

**SEPARATION AGREEMENT, WAIVER AND RELEASE BETWEEN:  
CITY OF LACROSSE AND FRANK DEVINE**

**THIS AGREEMENT** is made and is effective following its execution and the expiration of the revocation period (the "Effective Date") by and between City of La Crosse (the "City") and Frank Devine ("Employee").

**WHEREAS**, Employee is employed by the City;

**WHEREAS**, the City and Employee desire, through this Agreement, to settle all claims between the parties related to Employee's employment with the City, the termination of that employment relationship and any other known claims; and

**WHEREAS**, Employee desires, through this Agreement, to finalize his separation from employment with the City and accept the severance benefits offered by the City under the terms of this Agreement.

**NOW, THEREFORE**, the parties to this Agreement, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. **Separation Date.** Employee and the City agree the Employee's separation is effective June 22, 2019 (the "Separation Date"). This Agreement shall fulfill the requirement for giving two weeks' notice of separation to the Department.
2. Employee shall immediately return all equipment, badges, and other department property to the City. Except as agreed to by the Chief of Fire on an as-needed basis, Employee will have no duty to nor any authority to act directly or indirectly on behalf of the City in the capacity of a Division Chief/Fire Fighter or in any other capacity, and will receive no benefit, coverage, defense, or indemnity relative to any workers compensation or third-party liability claim based on any actions taken after the execution of this Agreement.
3. **Benefits.** Employee understands and agrees that, in consideration of his promises and obligations under this Agreement, the City shall provide the following on a non-precedential basis:
  - a) Employee will remain on paid administrative leave until the signing of this Agreement and will then immediately began exhausting his accrued personal leave banks in the following order through June 22, 2019, provided that Employee shall be required to reserve one full workday of accrued but unused vacation leave, personal business leave, floating holiday leave, or, if approved and applicable, sick leave, to be exhausted on June 21, 2019 to allow for Employee to exercise the retirement option under Subsection d) of this Paragraph:
    - Sick Leave hours, but only if and as approved under FMLA (if applicable)
    - Vacation Bank Hours
    - Personal Business Hours
    - Floating Holiday Hours

Employee understands and agrees that, if Employee exhausts the aforementioned applicable and approved accrued leave banks before the Separation Date, all payments to Employee under this Agreement shall cease as of the date immediately following such exhaustion; however, Employee shall be paid as if he worked a full workday on June 21, 2019 as set forth above.

- b) Employee will receive all benefits as an employee through the Separation Date, except that he will only receive Employer-paid health insurance in the same manner as provided to active duty employees through June 30, 2019. For purposes of state and federal insurance continuation laws, June 22, 2019 shall be considered the "Qualifying Event."
- c) Payout of all accrued but unused leave, with the exception of sick time, to the extent and as it exists on the Separation Date of this Agreement, including vacation time, comp time, and holiday pay, as part of the final payroll.
- d) Should the Employee opt to retire on June 21, 2019, the Employee is entitled to any retirement benefits under the Wisconsin Retirement System (WRS) and the benefits bestowed under the City of La Crosse Handbook including the retiree medical benefit plan and sick leave pay-off at retirement.

4. **Wisconsin Retirement System.** The Wisconsin Retirement System (WRS) governs any and all rights Employee may have to State retirement benefits. The City makes no promises or obligations as to what date the WRS will select as the official last work day when calculating benefits. WRS decision is final.

5. **Waiver and Release.** In consideration of the City's obligations and promises under this Agreement, Employee does hereby fully and forever discharge and release the City, and all of its departments and agencies, and all of the foregoing's past and present employees, officials, agents, representatives, insurers, and attorneys from any and all actions, causes of action, claims, demands, damages, including but not limited to, punitive damages, costs, expenses, attorney's fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or to result from any action by the City. This release does not include worker's compensation or duty disability claims.

By way of example only and without in any way limiting the generality of the foregoing language, Employee's release shall include all claims for relief or causes of action under the City of La Crosse Handbook, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e, et seq., the Americans with Disabilities Act of 1991, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 791, 793 and 794; the **Age Discrimination in Employment Act, (as amended by the Older Workers Benefit Protection Act, P.L. 101-433, sec. 201; 104 Stat. 983; amending 29 U.S.C. § 626)**; the Civil Rights Enforcement Statutes, 42 U.S.C. secs 1981 through 1988; Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001, et seq.; the National Labor Relations Act; 29 U.S.C. sec 151, et seq.; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Wisconsin Fair Employment

Laws, § 111.33 et seq., Wis. Stats.; the Wisconsin Family and Medical Leave Act, § 103.10, Wis. Stats.; the Municipal Employee Relations Act, § 111.70 et seq., Wis. Stats.; and any other federal, state or local statute, ordinance, or regulation dealing in any respect with discrimination or termination of employment, and, in addition, from all claims, demands, or actions brought on the basis of alleged wrongful or retaliatory discharge, breach of an oral or written contract, misrepresentation, defamation, interference with contract or intentional or negligent infliction of emotional distress, damage to business or professional reputation, conspiracy, negligence, invasion of privacy, or any other intentional tort or negligence claim or contract claim of any sort under the common law of any state or other jurisdiction.

6. **Effect of the Release.** Employee intends, in executing this Agreement, that it shall be effective as a bar to each and every claim, demand and cause of action described in Section 5. The release set forth in Section 5 is intended for the sole purpose of resolving the issues between the parties concerning Employee's employment, separation of employment and any other known claims. It is not intended for any other purpose and shall not be used by the parties or any third party for another reason. This entire Agreement is entered into on a non-precedential basis for all future matters. This release does not apply to any claims for unemployment insurance, workers compensation, or any claims to enforce this Agreement.
7. **Old Workers Benefit Protection Act.** This Agreement is governed by the Older Workers Benefit Protection Act. Under this Act, Employee has been offered at least twenty-one (21) days after being given this Agreement during which he may consider whether or not to sign this Agreement. Further, in compliance with that Act, Employee has seven (7) days following his signing of this Agreement during which he may revoke this Agreement. Therefore, this Agreement will not be effective or enforceable until the eighth day after the date Employee signs this Agreement for delivery to the City (the "Effective Date"). To be effective, a revocation must be received in writing within the seven (7) day period by the Chief of Fire, Ken Gilliam, at 726 5<sup>th</sup> Avenue, La Crosse, WI 54601. The parties understand and agree that, if Employee revokes this Agreement within the seven-day period referred to above, the City will not have any obligation to Employee under this Agreement.
8. **Employment References.** The City agrees it will provide a letter of reference in response to future employment reference requests, which will only provide dates of employment, positions held, any special duties or assignments performed, and final rate of pay. Nothing in this paragraph, however, shall constrain the City's ability to comply with the State of Wisconsin's Open Records law, or from providing additional information upon receipt of a waiver signed by Employee requesting such additional information be provided.
9. **Personnel File.** Employee's personnel file shall contain only those documents contained therein on the date of execution of this Agreement.
10. **Unemployment Compensation.** The parties agree and stipulate that Employee's separation is not a "voluntary termination of work" as that term is defined in § 108.04(7) Wis. Stats. and the City will not contest unemployment benefits (absent a subpoena) should the Employee apply, unless the Employee has obtained other employment.
11. **No Reemployment.** Employee acknowledges and agrees that the City will not reemploy him in any position or capacity. If Employee does seek such employment, Employee

understands and agrees that the City will be under no obligation to process Employee's application.

12. **Nonprecedent Setting.** The parties agree this Agreement is the product and result of unique facts and circumstances. This Agreement shall not serve as a precedent for any party with regard to any other circumstances or claims.
13. **Acceptance.** Employee acknowledges that he has had sufficient time to read this Agreement and consider his acceptance of it and voluntarily enters into this Agreement with full knowledge of its meaning and with the specific intention of resolving all outstanding matters pertaining to his employment with the City. In entering into this Agreement Employee is relying on his own judgment and knowledge and not on representations or statements made by the City, its employees or agents.
14. **No Admission of Liability.** The parties' participation in this Agreement is not to be construed as an admission of any wrongdoing or liability whatsoever by or on behalf of Employee, the City, its departments and agencies, or any of the foregoing's past and present employees, officials, agents, representatives, insurers, or attorneys.
15. **Choice of Law and Entire Agreement.** This Agreement shall be construed and enforced in accord with the laws of the State of Wisconsin. It constitutes the entire agreement between the parties as to issues provided for in this Agreement. Headings are for the convenience of the parties only and shall not affect the interpretation or application of this Agreement.
16. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the offending provision will be deemed amended or deleted to the extent necessary to conform to the applicable law. If the waiver and release under Section 5 of this Agreement is found to be illegal or unenforceable by any court of competent jurisdiction, then this Agreement shall become null and void, the City shall have no further obligation to Employee under this Agreement.
17. **Counterparts.** This Agreement may be executed in counterparts and shall be as effective as if executed on one document. Facsimile and scanned signatures shall be as effective and valid as original signatures.

IN WITNESS THEREFORE, the undersigned further state that they have carefully read the four (4) pages of the foregoing Agreement, know and understand its contents and sign the same under their own free will, being duly authorized to do so.

4-18-2019  
Date

Frank M. Devine  
Frank Devine

04/19/2019  
Date

CITY OF LACROSSE  
By: Ken Gilliam  
KEN GILLIAM