

GENERAL RELEASE AND SEPARATION AGREEMENT

This General Release and Separation Agreement ("Separation Agreement ") is dated this 17th day of April, 2018, and is entered into between the City of Broken Arrow, Oklahoma, a municipal corporation ("City") and Anthony C. Daniel ("Daniel"). Daniel is currently employed by the City of Broken Arrow as the Utilities Director. The City and Daniel agree that Daniel shall resign effective April 17, 2018, and this Separation Agreement shall govern the parties' obligations towards one another from April 17, 2018, forward.

A. CONSIDERATION

The parties agree that City will pay Daniel the following consideration in exchange for his resignation for the release included herein:

1. Severance Pay: Daniel is offered a \$32,871.00 final gross payment of salary, subject to and reduced by the usual and appropriate state and federal withholding taxes and any other customary payroll deductions, to be paid in a lump sum no later than May 4, 2018.
2. Health and Welfare Benefits: Health, Dental, Vision and Welfare Benefits will continue until April 30, 2018. Health benefits will be available under COBRA beginning May 1, 2018, and Daniel shall be responsible for making all COBRA payments.
3. Paid Leave: In addition to the severance pay under paragraph A(1), Daniel will be paid for all accrued leave through April 17, 2018, subject to and reduced by the usual and appropriate state and federal withholding taxes and any other customary payroll deductions.

Daniel agrees that these payments and benefits are sufficient consideration in return for this Separation Agreement, the General Release, and in accordance with the Employment Agreement.

B. GENERAL RELEASE

1. "CLAIMS" as used throughout this Separation Agreement means any and all matters relating to Daniel's employment with the City, the end of Daniel's employment relationship with City, this Separation Agreement, and any and all claims, grievances, debts, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, damages, actions, and causes of action, whether in law or in equity, whether known or unknown, suspected or unsuspected, arising from Daniel's employment with and/or end of employment with the City, as well as any and all claims pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by the Civil Rights Act of 1991, which prohibits discrimination in employment based on race, color, national origin, religion or sex; the Civil Rights Act of 1996, 42 U.S.C. §§ 1981, and 1983 and 1985, which prohibits violations of civil rights; the Age Discrimination in Employment Act of 1967, as amended, and as further amended by the Older Workers Benefit Protection Act, 29 U.S.C., § 621, *et seq.*, which protects certain employee benefits; 85 Okla. Stat. §5, *se seq.*, which prohibits retaliation based upon exercise of rights under Oklahoma's Workers' Compensation Act; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101, *et seq.*, which prohibits discrimination against the disabled, the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.*, which provides medical and family leave; the Fair Labor Standards Act, 42 U.S.C. § 201 *et seq.*, including the Wage and Hours Laws, any and all claims relating to the payment of any compensation and/or wages; any and all claims related in any way to and all other federal, state or local laws or regulations prohibiting employment discrimination. This release also includes, but is not limited to, a release by Daniel of any and all claims for breach of contract, mental pain, suffering and anguish, emotional upset, impairment of

economic opportunities, unlawful interference with employment rights, defamation, intentional or negligent infliction of emotional distress, fraud, wrongful termination, wrongful discharge in violation of public policy, breach of any express or implied covenant of good faith and fair dealing, and all other common law contract and tort claims.

2. Daniel and the City enter into this Separation Agreement with a full knowledge and understanding of the obligations set forth herein. Each party has had an opportunity to consult with his or its respective attorneys and has chosen to be bound presently and in the future by the releases and attendant affirmative obligations assumed herein.
3. RELEASE: Daniel hereby generally and completely releases, acquits, and discharges City, the City Council, the individual City Council Members, and any City employee from any and all CLAIMS.

C. DANIEL'S AFFIRMATIONS

This Separation Agreement advised Daniel and Daniel agrees to the following:

1. This Separation Agreement is written in laymen's terms, and he understands and comprehends it terms.
2. He does not waive any rights or claims that may arise after the date this Separation Agreement is executed.
3. He is receiving consideration beyond anything of value to which he is already entitled.
4. He has been given a reasonable period of time to consider this Separation Agreement.

D. ABSTAIN FROM LEGAL ACTION

Daniel specifically agrees never to file or initiate a charge, complaint, grievance and/or a lawsuit asserting any claims that are released in paragraph B.

E. NON-ADMISSION

By making this Separation Agreement, City does not admit that it has done anything wrong with respect to Daniel or his employment with the City of Broken Arrow.

F. DAMAGES

If Daniel violates any provision of his obligations outlined in this Separation Agreement, City is relieved of all obligations outlined in paragraph A and may seek to recover consideration paid with any damages incurred due to Daniel's breach of this Separation Agreement. Further, Daniel will pay for all costs incurred by City or any of its officers or employees in pursuing claims, including reasonable attorneys' fees.

G. CONSTRUCTION OF THIS AGREEMENT

All parties specifically charge and require that any court, agency, or trier of fact engaged in review or interpretation of this Separation Agreement shall give effect to its whole and/or specific parts, so as to enforce this Separation Agreement and its obligation, regardless of any local rule of construction. In furtherance of this, all parties specifically charge the trier of fact to give effect to the intent of the parties, even in so doing, reformation of specific provisions of the Severance Agreement is required, consistent with the terms of the Severance Agreement. This Release is to be interpreted in accordance with the laws of the State of Oklahoma.

H. TERMS OF THIS SEPARATION AGREEMENT ARE SEVERABLE

If any portion of this Separation Agreement is found to be unenforceable, then both Daniel and City desire that all other portions that can be separated from it or appropriately limited in scope shall remain fully valid and enforceable.

I. NON-DISPARAGEMENT

The parties agree that their professional and personal reputations are important and should not be impaired by either party. City agrees not to disparage the professional or personal reputation of

Daniel and Daniel agrees not to disparage the professional or personal reputation of City, the City Council, the individual City Council Members or any of the City's Employees.

J. RETURN OF PROPERTY AND TRADE SECRETS

Daniel shall remain the Utilities Director for the City of Broken Arrow, Oklahoma, until April 17, 2018. Daniel promises to return to City all City property in his possession now or discovered any time in the future, including but not limited to keys and access cards. City promises to return all of Daniel's personal property in its possession now or knowingly discovered any time in the future to the last known address of Daniel. Daniel understands it is his responsibility to provide the City's Human Resources office with any change in address and/or telephone number through January 1, 2019, for the purposes of distribution of Internal Revenue Service Form W-2.

K. CONSIDERATION PERIOD

By noting his initials at the conclusion of this paragraph, Daniel acknowledges that he received a copy of this Separation Agreement on April 10, 2018, and was offered a period of seven (7) days to consider it.

AD Initials of Daniel

L. REVOCATION PERIOD

Daniel may revoke this Separation Agreement within seven (7) days of his signing it. Revocation can be made by delivering a written notice of revocation to the Human Resources Director, Jannette McCormick. *For such revocation to be effective, notice must be received no later than 5:00 p.m. on the seventh calendar day after Daniel signs this Separation Agreement.* If Daniel revokes this Separation Agreement, it shall not be effective or enforceable.

M. TORT CLAIM DEFENSE

The City shall defend, hold harmless, and indemnify Daniel in the manner specified by the Oklahoma Governmental Tort Claims Act against any tort, professional liability claim, or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring during Daniel's tenure in the good faith performance of the duties of office.

DANIEL ACKNOWLEDGES THAT HE HAS READ THIS SEPARATION AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT.

PLEASE READ THIS SEPARATION AGREEMENT CAREFULLY.

4-12-18
Date

Anthony Druie
Employee Signature

2944 N. JUNIPER CT.
Address

BROKEN ARROW, OK 74012
City, State, Zip

918-852-0500 918-814-5710
Phone # Alternate Phone #

Date

Michael Spurgeon, City Manager
City of Broken Arrow, Oklahoma

APPROVED AS TO FORM:

City Attorney