

Memorandum of Understanding

This Agreement and Release of All Claims ("Agreement") is made and entered into on the date set forth below by and between Scott Oglesby, on behalf of himself, his spouse, agents, representatives, attorneys, assigns, heirs, executors and administrators (hereinafter collectively referred to as "Mr. Oglesby"), the City of Bloomington, including its affiliates, predecessors, successors, representatives, elected officials, attorneys, officers, agents and employees, individually and in their representative capacities (hereinafter collectively referred to as "the City"), and the Policemen's Benevolent and Protective Association, Unit No. 21, including its affiliates, predecessors, successors, representatives, elected officials, attorneys, officers, agents and employees, individually and in their representative capacities (hereinafter collectively referred to as the "the Union")

WHEREAS, Arbitrator Jeanne Vonhof issued an award on December 24, 2012, in which she ordered Mr. Oglesby's reinstatement to the City's Police Department, and for the City to make Mr. Oglesby "whole for backpay and all other losses resulting from his termination, except for those resulting from the one-day suspension;" and

WHEREAS, the parties desire to resolve fully any and all claims related to Mr. Oglesby's employment status with the City without resorting to further litigation;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

1. **Voluntary Separation of Service under "honorable circumstances"**. Mr. Oglesby will voluntarily apply for pension benefits from the Police Pension fund of the City of Bloomington effective May 2, 2016. The City of Bloomington agrees that Mr. Oglesby's retirement shall constitute a separation of service under "honorable circumstances" as described in the Unit 21 Collective Bargaining Agreement (CBA), Section 10.3. Sick Leave, page 58, of the agreement dated May 1, 2011-April 30, 2014. The parties agree the CBA dated May 1, 2011-April 30, 2014, will govern the disbursement of Mr. Oglesby's accumulated sick leave time.
2. **Payment of Unused Sick Time**. The City of Bloomington agrees to remit to Officer Oglesby all unused sick time in accordance with: (the) *Agreement Between the City of Bloomington and the Police Benevolent and Protective Association, Unit 21, dated May 1, 2011- April 30, 2014.*
3. **Pension Application Date**. Mr. Oglesby will apply for a disability pension on or before May 2, 2016.
4. **No Reinstatement**. Mr. Oglesby will voluntarily and irrevocably resign his employment as a City police officer, and his resignation will take effect no later than the close of business on July 31, 2016. The parties agree that in the event Mr. Oglesby applies and is approved for disability benefits that Mr. Oglesby is waiving any rights of

recall or reinstatement, and that he will not seek or accept employment with, or reinstatement by, the City at any time in the future.

5. **Work Status.** Mr. Oglesby will begin using accrued leave time on the day after this agreement is approved by Council. Mr. Oglesby will be required to use at least seven (7) sick days first, followed by available Vacation, PC and Court days. These leave hours will be paid at Mr. Oglesby's current hourly rate of pay. During this period of time Mr. Oglesby is in a paid status and will continue to accrue benefits and be eligible for 75% of his health insurance premiums payment by the City. However, Mr. Oglesby will be ineligible for any work assignments with the Bloomington Police Department.

Mr. Oglesby as of November 30, 2015 has the following leave time available:

Vacation: 533
Sick: 1420.5
Sick Hours to be paid into RHS at rate earned 309
PC: 64
Court: 102.25

Mr. Oglesby will be placed in an unpaid leave status effective May 3, 2016. During this time he will not accrue any benefits, leave time or be eligible for any health insurance premiums,

6. **Backpay.** The City will issue two checks made payable to Mr. Oglesby in the total combined gross amount of \$322,209.08, less all applicable tax and pension withholdings as required by law. The City of Bloomington shall be responsible for calculating the proper pension withholdings, including interest as calculated by the pension fund accountants, to ensure Mr. Oglesby owes no financial obligations to the pension fund.

Payments will be made as follows:

- One-half of gross back pay in the amount of \$161,104.54 within twenty (20) business days of this MOU being signed by the parties. The City shall report this payment on Oglesby's 2015 W-2 as wages earned in 2015.
- One-half of gross back pay in the amount of \$161,104.54, paid upon receipt of Mr. Oglesby's resignation. The City shall report this payment on Oglesby's 2016 W-2 as wages earned in 2016.
- In addition, upon execution of this agreement, Mr. Oglesby will have a payment of Monthly Sick Leave to be paid into the employees Retirement Health Savings account for sick leave time earned in the amount of \$12,036.72 paid within twenty (20) business days of this MOU being signed by the parties.

- Mr. Oglesby will be eligible for retro pay for eligible earnings beginning May 1, 2014 consistent with other Unit 21 employees.
 - Mr. Oglesby is due reimbursement of Health and Dental Insurance Premiums in the amount of \$17,689.65 paid on an accounts payable check within thirty (30) business days of this MOU being signed by the parties
7. The City shall issue the first check which will be one half of the backpay, jointly payable to Mr. Oglesby and the Illinois Department of Employment Security in the gross amount of \$161,104.54. The check shall be mailed via certified U.S. Mail return receipt requested to:

Illinois Department of Employment Securities
33 South State Street,
9th Floor,
Chicago, Illinois 60603
Attention Special Agent Eric Congious,
Care of the Unemployment Insurance Program Support Unit

The City shall ensure the procedures outlined in 820 ILCS 405/900, subsection D, shall be complied with and state, at the relevant portion:

"D. Whenever, by reason of a back pay award made by any governmental agency or pursuant to arbitration proceedings, or by reason of a payment of wages wrongfully withheld by an employing unit, an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped or otherwise recovered as herein provided. An employing unit making a back pay award to an individual for weeks with respect to which the individual has received benefits shall make the back pay award by check payable jointly to the individual and to the Department."

8. **General Release.** By signing this Agreement and receiving the valuable consideration described above, Mr. Oglesby and the Union hereby fully release and forever discharge the City from any and all claims or liabilities of any kind arising out of or relating in any way to Mr. Oglesby's employment with, and separation from, employment from the City. However, nothing herein shall constitute a waiver of Mr. Oglesby's right, or the Union's right, to enforce a breach of this agreement.

This release includes, but is not limited to, any claim (except claims to enforce this agreement) arising under the Illinois Human Rights Act, 775 ILCS 5/1 *et seq.*; the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.*; the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; the Americans with

Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Family & Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, all claims under 42 U.S.C. §§ 1983, 1985, 1988; all claims under the City's employee handbook and/or personnel policies; all claims under the City-Union collective bargaining agreement, including but not limited to the grievance that was arbitrated before Arbitrator Jeanne Vonhof; all claims arising from Arbitrator Vonhof's December 24, 2012 arbitration award, including but not limited any backpay or accrued leave claims relating to Arbitrator Vonhof's "make whole" award; all claims for wrongful discharge; all claims based on any actual or implied contract, including, but not limited to, any employment agreement between the City and Mr. Oglesby; all claims for retaliatory discharge; all civil rights claims; all amendments to the foregoing statutes; all claims under federal common law and state common law; and all claims under any other federal, state or local statute, law, ordinance, regulation or order.

It is the intention of Mr. Oglesby, the Union and the City that in executing this Agreement, Mr. Oglesby and the Union are providing a general release and that it shall be an effective bar to each and every claim, grievance, demand, and cause of action, either known or unknown, for all acts or omissions of the City and its agents, jointly and separately, individually and in their representative capacities, for any injuries suffered by Mr. Oglesby occurring on or prior to the date this Agreement is executed. Provided, however, that the forgoing shall not, in any way, preclude Oglesby from seeking compensation or benefits related to a disability claim.

The City agrees not to contest or oppose, either directly or indirectly, any efforts by Mr. Oglesby to seek disability benefits. The City will not advance, advocate for, nor attempt to intervene in a fashion, or a position that opposes Mr. Oglesby's efforts to secure disability benefits.

9. Rights and Claims Excluded From the General Release. Excluded from the release in Section 5 above are any claims or rights that cannot be waived by law.

10. Non-Admission of Liability. The parties agree and acknowledge that this Agreement and the consideration described herein does not constitute and shall not be interpreted as an admission of liability on the part of the City. This Agreement resulted from the parties' mutual desire to resolve any and all matters and controversies between them, and to amicably effectuate Mr. Oglesby's employment separation from the City.

11. Additional Acknowledgements. Mr. Oglesby further acknowledges that:

- (a) Mr. Oglesby is entering into this Agreement knowingly and voluntarily and the Agreement is written in language that he understands;
- (b) this Agreement includes a waiver and release of claims under the Age Discrimination in Employment Act (ADEA) as described in Section 5 above;
- (c) the City is hereby advising him to consult with an attorney before signing this Agreement;

- (d) this Agreement waives and releases only those claims and rights arising prior to the date that he signs this Agreement;
- (e) he understands that he may take up to forty-five (45) days to consider this Agreement before signing it; and

12. Revocation Rights. After Mr. Oglesby signs this Agreement, he will have seven (7) days to revoke it if he changes his mind. If Mr. Oglesby wants to revoke the Agreement, he should hand deliver or mail a written revocation to Nicole Albertson (or her designee), at 109 Olive Street, Bloomington, Illinois 61701, within seven (7) days after he signs the Agreement. If Mr. Oglesby timely revokes the Agreement pursuant to this paragraph the City will reopen negotiations on arbitrator Jeanne Vonhof's award. This Agreement shall not become effective and enforceable until the seven (7) day revocation period described in this paragraph has expired with no revocation by Mr. Oglesby.

13. Entire Agreement. This Agreement constitutes the complete agreement between Mr. Oglesby, the City and the Union. No other promises or agreements, either express or implied, shall be binding upon such parties unless hereinafter reduced to writing and signed by each party.

14. Severability. To the extent that any portion of this Agreement may be held to be invalid or legally unenforceable by a court of competent jurisdiction, the parties agree that the remaining portions of this Agreement shall not be affected and shall be given full force and effect.

15. Non-Precedential Nature of the Agreement. The parties agree that this Agreement will be non-precedential in all respects and does not constitute or create a "past practice."

16. Binding Nature of the Agreement. This Agreement shall be binding upon the parties, as well as their respective agents, representatives, heirs, successors and assigns.

17. Governing Law. The laws of the State of Illinois shall govern the validity, performance, enforcement, interpretation and any other aspect of this Agreement, notwithstanding any state's choice of law provisions to the contrary.

18. Null and Void Provision. During the discussions that laid the foundation for this MOA, the parties discussed at length the importance of providing Mr. Oglesby with half, or approximately half, of the money owed to him in the calendar year 2015 and the remainder of the money owed remitted in 2016. The parties discussed at length that Mr. Oglesby's tax obligations would be impacted adversely to his interests if half, or approximately half of the money owed was not paid in 2015. The City understands, and agrees, that payment in two portions, is a cornerstone of this agreement. Should the City, for any reason what-so-ever, not provide Officer Oglesby with half, or approximately half of the money owed in 2015 and the remainder in 2016, this entire agreement, in its entirety, is null and void.

19. ICMA Contributions. As long as Mr. Oglesby is eligible, the City agrees to contribute thirty-six thousand dollars (\$36,000.00) in to the 457 account of Mr. Oglesby in calendar year 2015. The City also agrees to contribute thirty-six thousand dollars (\$36,000.00) in to the 457 account of Mr. Oglesby in calendar year 2016. It is understood and agreed between the parties that these sums of money will be withheld from the money owed Mr. Oglesby. The parties discussed at length that Mr. Oglesby's tax obligations can be minimized by making these contributions to Mr. Oglesby's City sponsored 457 account. Should the city, for any reason what-so ever, fail to make these two 457 contributions in accordance to the dates outlined above, the City will remit to Mr. Oglesby an amount of money equal to the tax saving Mr. Oglesby would have realized.

Mr. Oglesby acknowledges that he has been instructed by the City to seek independent legal counsel before executing this Agreement as well as to consult with his Union representatives. Mr. Oglesby understands that he has forty-five (45) days, from the date that Mr. Oglesby and the Union were given this agreement, to review this agreement. Mr. Oglesby acknowledges that he has been given a reasonable time in which to consider this Agreement. Mr. Oglesby acknowledges that he has thoroughly discussed all aspects of this Agreement with his attorney and Union representatives, that he has carefully read this Agreement and the releases contained herein, that he understands all of the terms set forth in this Agreement, that he has not been coerced, threatened, or intimidated into signing this Agreement, he has not relied on any oral or other promises or understandings in connection with this Agreement and that he Mr. Oglesby is executing this Separation Agreement and Release of All Claims on a knowing and voluntary basis and with full knowledge of its meaning and effect.

AGREED:

SCOTT OGLESBY

Scott Oglesby
Date

CITY OF BLOOMINGTON

By: _____
David Hales, City Manager
Date

POLICEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, UNIT NO. 21

By: _____
Elected Unit 21 Official
Date