

VOLUNTARY RESIGNATION AND RELEASE OF CLAIMS

This Voluntary Resignation and Release of Claims ("Release") is hereby provided to the City of Marshalltown, Iowa (hereinafter "City" or "Employer") by Jessica Kinser to memorialize the terms of Ms. Kinser's resignation from the City.

RECITALS

- A. Ms. Kinser is employed by the City as the City Administrator.
- B. Ms. Kinser desires to resign from the City under certain terms and conditions.
- C. Ms. Kinser desires to resign effective May 12, 2023.
- D. Parties acknowledge Ms. Kinser's resignation is voluntary but stems from a disagreement between the parties.
- E. The Marshalltown City Council has determined that settlement of the disagreement would serve the public purpose of saving time and money associated with resolving the dispute.

In consideration of the mutual covenants and promises contained in this Release, the parties agree:

1. RESIGNATION DATE.

By her signature on this Release, Ms. Kinser hereby resigns, effective May 12, 2023 ("the Resignation Date"). Ms. Kinser shall not return to City property after the Resignation Date without permission of the City (except for ordinary use of City facilities as a private citizen). Ms. Kinser's City-provided health insurance coverage will continue through the end of the month coinciding with Ms. Kinser's Resignation Date.

2. RELEASE OF ALL CLAIMS AND COVENANT NOT TO SUE.

In exchange for the above consideration and of the mutual promises and good and valuable consideration in this Release, Ms. Kinser, her heirs, executors and assigns hereby release, acquit and forever discharge the City, the City's agents, directors, officers, employees, and representatives, and all persons acting by, through, under, or in concert with the foregoing from any and all claims, demands and causes of action of every nature, including, but not limited to all claims set forth herein and including, but not limited to any claim of due process arising by reason of Ms. Kinser's employment as a public employee; discrimination on the basis of race, sex, religion, marital status, sexual orientation, national origin, handicap or disability, retaliation, age, veteran status, special disabled veteran status, the Age

Discrimination in Employment Act, the Older Workers Benefit Protection Act, FMLA, the FLSA, Iowa Code Section 91A, citizenship status or any category protected by law; any claim based on a statutory prohibition or requirement; any claim arising out of or related to an express or implied employment contract; any contract affecting terms and conditions of employment or a covenant of good faith and fair dealing; any tort claims; any personal gain regarding any claim arising under the qui tam provisions of the False Claims Act, 31 U.S.C. 3730, and any claims to attorney fees or expenses; and any other claims under federal, state or local laws, with the exception of workers' compensation claims, that might be available to Ms. Kinser now or in the future, or other claims, acts, causes, matters, or things that could have been made, including but not limited to any claims for unpaid commissions, expenses, liquidated damages, incentive compensation, back pay, front pay, compensatory damages, punitive damages, medical costs, attorney's fees, disability leave, fringe benefits, vacation pay, bonuses, and other employment benefits and compensation, including but not limited to any alleged payments to any of her retirement plans and health care plan (but is not releasing any claims to vested benefits), and expenses and costs which Ms. Kinser or her attorney may have incurred in connection with the above claims based upon or related to her employment by the City, the City's failure to rehire her, and any other management decision, work assignment, or other employment action pertaining to Ms. Kinser arising out of or relating to Ms. Kinser's employment relationship with the City, and any other pending charges or complaints with any agency as of Ms. Kinser's signing of this document.

Ms. Kinser further agrees never to sue the City or cause the City to be sued regarding any matter within the scope of the above release (but does not include any action for breach of this release). If Ms. Kinser violates this release by suing the City or causing the City to be sued, Ms. Kinser agrees to reimburse the City any amounts paid and to also pay all costs and expenses of defending against the suit incurred by the City, including reasonable attorneys' fees, except to the extent that paying such costs and expenses is prohibited by law or would cause the invalidation of the foregoing release.

This Release applies only to claims or rights that Ms. Kinser may have as of the date this Release is executed. This Release does not apply to any rights or claims of Ms. Kinser that may arise after the date this Release is executed. Ms. Kinser acknowledges and agrees that this Release does not apply to any right the City may have to secure restitution in any criminal matter.

By signing this Release, Ms. Kinser is giving up her right to pursue any claims against the City that she may have as of the date this Release is executed, including, but not limited to, claims under the statutes and common law enumerated above. Nothing in this Release is intended to interfere with Ms. Kinser's right to file a claim with any local, state, or federal agency. However, by executing this Release, Ms. Kinser waives her right to recover any damages or benefits in any local, state, or federal agency's proceeding. This Release operates

as a complete bar and defense against any such claims against the City by Ms. Kinser.

3. WAIVER OF CERTAIN RIGHTS UNDER ADEA and OWBPA.

In consideration of the compensation provided by Employer under this Release, Ms. Kinser waives any claims she has or may have under the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, and any successor thereto, or any similar law. Ms. Kinser acknowledges that she received consideration for the release of ADEA claims, which is in addition to anything of value to which she was already entitled. Ms. Kinser waives no rights or claims under the ADEA, OWBPA or ERISA that may arise after this Release. Ms. Kinser has been advised of her right to an attorney and has been encouraged to consult with her attorney.

4. REVOCATION PERIOD.

Ms. Kinser shall have twenty-one (21) days to review and consider this Release. Ms. Kinser shall have seven (7) days to revoke this Release after she signs it. If Ms. Kinser revokes her acceptance of this Release, she must do so in writing to Human Resources Director Jill Petermeier at e-mail address jpetermeier@marshalltown-iowa.gov within the seven (7) day revocation period. Ms. Kinser understands that if she revokes (or cancels) this Release, the City does not owe her anything under Paragraph 5 of this Agreement, "Consideration".

5. CONSIDERATION.

In consideration for the releases described in paragraphs 2, 3 and 4 of this Release, the City agrees to pay Ms. Kinser the following: \$7,136.00 as salary and wages and taxed as such, payable in equal installments on regular salary payment dates. These payments will begin on May 13, 2023, and end on November 12, 2023 (hereinafter referred to as the "Payment Period"). Ms. Kinser and the City agree that the maximum amount Ms. Kinser will be paid pursuant to this Release is \$92,768.00.

Ms. Kinser agrees that if she finds "suitable employment" at any time during the Payment Period she will notify the City's Human Resources Director via e-mail within twenty-four (24) hours of accepting said suitable employment. Ms. Kinser and the City agree that if Ms. Kinser finds suitable employment, her payments shall cease following the subsequent two payments from the date she accepted said suitable employment. Ms. Kinser and the City agree that if Ms. Kinser finds suitable employment, following the two subsequent payments described herein the City shall not owe Ms. Kinser any additional payments.

For purposes of this agreement "suitable employment" shall be defined as employment of a comparable level of responsibility, tasks, pay, and prestige to Ms.

Kinser's position with the City, including, but not limited to, any position in municipal management or administration, including as a deputy or assistant **or** employment in the public or private sector paying an annual salary of \$165,000.00.

For purposes of this agreement, "acceptance of suitable employment" shall be defined as acceptance of a final offer of employment from an employer.

The City and Ms. Kinser agree that following the Resignation Date, Ms. Kinser will elect COBRA coverage and the City will pay the portion of the coverage beyond the rate Ms. Kinser paid at the time of the Resignation Date. Ms. Kinser agrees that she will pay the portion of her coverage that she paid at the time of the Resignation Date. The City will continue to pay for the portion of the coverage beyond the rate Ms. Kinser paid at the time of the Resignation Date and Ms. Kinser will pay the portion she paid at the time of the Resignation date until the earlier of the following occurs: (1) the end of the Payment Period; or (2) the last day of the month in which Ms. Kinser provides the City's Human Resources Director with notice of finding suitable employment. Ms. Kinser agrees that she will make arrangements with the Human Resources Director for payment of her portion of the insurance coverage.

Ms. Kinser agrees that any failure by her to notify the City of suitable employment pursuant to this Release is a material breach of this Release. If that occurs the City will no longer owe any amounts to Ms. Kinser pursuant to this Release and she shall repay all amounts previously paid to her, including payment for all wages and benefits, by the City during the Payment Period within ten (10) days of said material breach.

The City and Ms. Kinser agree to pay her all of her earned, accrued vacation time on the payday following her resignation date.

6. CONFIDENTIALITY.

Ms. Kinser shall keep secret and retain in the strictest confidence all confidential, proprietary and non-public matters, tangible or intangible, of or related to the City, its agents, directors, officers, employees, attorneys, and representatives, including, without limitation, trade secrets, business strategies and operations, financial information, personnel information, legal advice obtained from counsel, information regarding litigation, actual, pending or threatened, identities and habits of employees and agents and business relationships, and shall not disclose them to any person, entity, or any federal, state or local agency or authority, except as required by law. However, if disclosure is sought because of any subpoena or other legal process initiated against Ms. Kinser, Ms. Kinser shall immediately give the City written notice to afford the City an opportunity to contest such disclosure.

Ms. Kinser represents she has returned to the City all confidential, proprietary, and non-public materials, or any other property of the City in her possession.

7. RETURN OF EQUIPMENT.

Ms. Kinser acknowledges she was issued equipment, or was allowed to possess equipment, including her keys and city identification. Ms. Kinser shall return any and all such equipment to the Human Resources Director Jill Petermeler within forty-eight (48) hours of the Resignation Date.

8. REPRESENTATION.

In her decision to enter into this Release, Ms. Kinser acknowledges she has been given adequate time to discuss the terms with an attorney to the extent she so desired and her signature expresses her knowing and voluntary Release, which was not induced by any threat or duress occasioned by the City.

9. ENTIRE RELEASE.

This Release contains the entire understanding between Ms. Kinser and the City and may not be changed orally but only by written Release signed by all parties. The parties further expressly agree this Release constitutes a single integrated contract expressing the entire Release of the parties.

10. NONADMISSION.

This Release is not and shall not be construed as an admission by the City, or any other person covered by the Release, of any acts of discrimination or wrongdoing against Ms. Kinser, that the City or any other person violated any federal, state or local law, or that Ms. Kinser's treatment by the City or any other person was unwarranted, unjustified, discriminatory or otherwise unlawful. The City disclaims it engaged in any discrimination against Ms. Kinser or any other person. Ms. Kinser is not a prevailing party for any anti-discrimination law.

11. BINDING EFFECT.

This Release is binding on Ms. Kinser's heirs and personal representatives and on the successors and assigns of the City.

12. GOVERNING LAW.

This Release is made and entered into, and shall be subject to, governed by and interpreted in accordance with the laws of the State of Iowa.

13. SEVERABILITY.

If any term or provision of this Release is held invalid or unenforceable, the remaining terms and provisions shall not be affected.

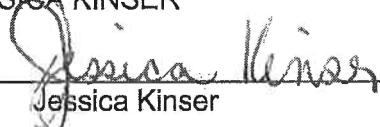
14. MUTUAL NONDISPARAGEMENT.

The City shall not disclose any details of Ms. Kinser's employment, except pursuant to a valid subpoena, Iowa Code Chapter 22 Request, court/administrative order and, in such event, the City shall notify Ms. Kinser of such subpoena or court/administrative order prior to making any response so that she may respond as she thinks necessary. The City will not notify Ms. Kinser prior to releasing public information pursuant to Iowa Code Chapter 22. Ms. Kinser will not disparage the City or its representatives.

I HAVE READ THIS RELEASE AND UNDERSTAND ITS TERMS. I SIGN IT FREELY AND VOLUNTARILY.

JESSICA KINSER

By:



Jessica Kinser

5/9/23

Date

CITY OF MARSHALLTOWN

By:

Mayor Joel Greer

5/9/23

Date