

June 16, 2014

To: Mayor Bemrich and City Council

From: David Fierke, City Manager

Subject: Settlement Agreement

ACTION: For vote Monday, June 23, 2014

Brief History

The City of Fort Dodge has been working with Travelers Insurance to resolve a worker's compensation claim. This claim has been ongoing for two years with multiple attempts to restore the employee to full work status.

Analysis of Issue

MMI was determined early this spring. Since that time, discussions have been taking place between the attorney for the employee and Travelers. As the defendant in this case along with Travelers, we have had several conversations with Travelers in attempting to resolve, amicably, this workers comp case. In late May, a verbal agreement was reached. The employee would receive a lump sum payment from Travelers. The employee will be retiring and the City would pay the employee his vacation, sick leave and other benefit payments per his collective bargaining agreement and permit him to remain on the City's health insurance plan thru August. The employee will continue to pay his portion of the premium for the months of June, July and August.

A release of claims agreement has been prepared as a part of this total agreement to protect the City from further claims. I contacted Mike Galloway, our employment attorney and asked him to prepare this release of claims agreement. This agreement is now before you.

Budget Impact

This will not have an immediate direct budgetary impact. However, we will likely see an increase in our annual workers compensation invoices. This is due to the manner in which claims are now weighted in the process of determining the mod rating. Long term claims such as this have a detrimental impact on the mod rating to a greater extent than in prior years.

Strategic Plan Impact

N/A

Comprehensive Plan Impact

N/A

Subcommittee or Commission Review / Recommendation

N/A

Staff Conclusions / Recommendations

The Human Resources Director and special legal counsel recommend approval.

Alternatives

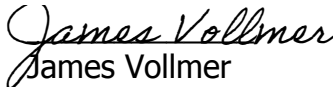
If the resolution is not approved, the City will need leave itself open to possible legal actions in the future.

Implementation and Accountability

The Human Resource Director is responsible for the implementation of this settlement.

Signed

Approved


James Vollmer
Human Resource Director



David R. Fierke
City Manager

RESOLUTION NO. _____

A RESOLUTION APPROVING SETTLEMENT

WHEREAS, the City has entered into an agreement with Tom Stufflebean; and

WHEREAS, formal Council action is necessary to cause the following to be implemented.

NOW, THEREFORE, BE IT RESOLVED that the attached settlement agreement be approved authorizing the City of Fort Dodge to enter into such agreement for terms as stipulated in the attached agreement.

PASSED AND APPROVED by the City Council of the City of Fort Dodge this _____ day of _____, 2014.

Ayes: _____

Nays: _____

Other: _____

City of Fort Dodge

Matt Bemrich, Mayor

Attest:

Jeff Nemmers, City Clerk

AHLERS & COONEY, P.C.

100 COURT AVENUE, SUITE 600
DES MOINES, IOWA 50309-2231
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Katherine A. Beenken
KBeenken@ahlerslaw.com

Direct Dial:
515.246.0303

June 10, 2014

Attorney-Client Communication

Mr. Jim Vollmer
Human Resources Director
City of Fort Dodge
819 1st Ave South
Fort Dodge, Iowa 50501

RE: Stufflebean Settlement

Dear Jim:

Please find enclosed the Settlement Agreement signed by Mr. Stufflebean. To ensure the agreement is binding, we would encourage the City Council to approve the agreement and direct you and the mayor to sign. Please keep the signed original for your records and return a copy to our offices.

Please let us know if you have any questions or concerns.

Sincerely,

Ahlers & Cooney, P.C.



Katherine Alison Baier Beenken

KAB:sp
Enclosure(s)

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GENERAL RELEASE AND COVENANT NOT TO SUE

The City of Fort Dodge, Iowa ("the City") and Tom Stufflebean ("Stufflebean"), on behalf of himself, his heirs, executors, successors, and assigns, hereby enter into this General Release and Covenant Not to Sue ("Agreement").

WHEREAS, Stufflebean was employed by the City until June 1, 2014.

WHEREAS, Stufflebean resigned his position on May 23, 2014, and seeks vacation and sick leave payout, as well as the ability to remain on the City's health insurance until August 31, 2014.

WHEREAS, all parties desire to settle all potential outstanding issues between them on an amicable basis on the terms and conditions stated in this Agreement.

NOW, THEREFORE, the City and Stufflebean agree as follows:

1. **CITY OBLIGATIONS.** The City, in full and final settlement of all of Stufflebean's stated and unstated claims, agrees as follows:
 - a. To compensate Stufflebean for his unused sick leave days in the amount of seven thousand, six hundred forty-six dollars and seventy cents (\$7,646.70).
 - b. To compensate Stufflebean for unused and unpaid vacation days in the amount of four thousand, two hundred twenty-five dollars and ninety-one cents (\$4,225.91).
 - c. Stufflebean will receive the payment amounts in sections (a) and (b), above, in one lump-sum payment through payroll prior to July 1, 2014. The payment shall be subject to federal and state withholding taxes.
 - d. To allow Stufflebean to remain on the City's health insurance plan through August 31, 2014. The City's portion of this cost is \$1,192.72 per month and Stufflebean will pay the employee portion of the monthly health insurance premium contribution, which is \$103.72 each month. Stufflebean must pay the employee contribution no later than the third day of the month, or the City may remove Stufflebean from coverage under the City's plan.
2. The City denies all liability; this document is not an admission of any kind.
3. **RELEASE.** Stufflebean fully and forever releases and discharges the City its directors, officers, employees, agents, trustees, pension plan trustees and administrators, contractors, consultants, and attorneys, whether past, present, or future, and all predecessors,

successors, and assigns thereof, ("Released Parties") from any and all claims, demands, agreements, causes of action, injunctions, and restraints or liabilities of whatever kind, whether in law, equity, or otherwise, and whether now known or unknown or which have ever existed or now exist, including, but not limited to, claims, liabilities, or causes of action relating to or arising out of Stufflebean's recruitment, hiring, employment, transfer or separation from employment with the City. This means Stufflebean releases any and all existing rights to relief of any kind from the Released Parties, including but not limited to:

- a. all claims arising out of or relating to past statements or actions of the Released Parties;
- b. all claims pursuant to the Age Discrimination in Employment Act, 29 U.S.C § 621 et. seq., as amended by the Older Workers Benefit Protection Act of 1990; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq., 42 U.S.C. § 1981; the Civil Rights Act of 1991; the Americans With Disabilities Act, 42 U.S.C. §§ 12101 et. seq.; the Family and Medical Leave Act, 29 U.S.C. 2601 et. seq.; the Fair Labor Standards Act, as amended, 29 U.S.C. Ch. 8; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 et seq.; the Iowa Civil Rights Act, as amended, Iowa Code §§ 216 et seq.; Wage Payment Collection, Iowa Code Ch. 91A; claims of a violation of Continuation and Conversion of Group Health Insurance, 26 U.S.C. § 4980B (COBRA); Iowa Code Chapter 509B; claims under any local rule, state or federal statute, and claims under common-law, promissory estoppel, claims for breach of contract, claims for any tort, claims for any wrongful discharge, or any other claims which could have been but have not been asserted.
- c. all claims under any principal of common law, including but not limited to, claims for alleged harassment, retaliation, assault or battery, defamation, intentional or negligent infliction of emotional distress, invasion of privacy, false imprisonment, fraud, intentional or negligent misrepresentation, interference with contractual or business relationships, violation of public policy, negligence, breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, promissory or equitable estoppel, and any other wrongful practices;
- d. all claims for any type of relief from the Released Parties, including but not limited to, claims for punitive damages and damages for any alleged breach of contract, any tort claim, or any alleged personal injury or emotional injury or damage; and all claims for attorneys; fees, costs, and disbursements;

4. **WAVIER OF GOVERNMENT ACTION.** Stufflebean agrees not to request, or to directly or indirectly cause, any governmental agency to commence any investigation or bring

any action against the Released Parties, its affiliates or its successors or assigns, or the directors, officers, employees, or agents of any of them, and Stufflebean waives any remedy or recovery in any action which may be brought on his behalf by any government agency or other person.

5. **COVENANT NOT TO SUE.** Stufflebean covenants not to sue or to institute or cause to be instituted any kind of claim or action (except to enforce this Agreement) in any federal, state, or local agency or court against any of the Released Parties arising out of or attributable to Stufflebean's employment with the City, or any other action or cause of action released under paragraph 3 above.

6. **ESSENTIAL AND MATERIAL TERMS.** Stufflebean acknowledges and agrees that this release and the covenant not to sue set forth in paragraph 5 are essential and material terms of this Agreement and that without such release and covenant not to sue, no agreement would have been reached by the parties.

7. **GOVERNING LAW.** The provisions of this Agreement shall be construed in accordance with the laws of the State of Iowa. In the event that any paragraph, subparagraph, or provision of this Agreement shall be determined to be contrary to governing law or otherwise unenforceable, all remaining portions of this Agreement shall be enforced to the maximum extent permitted by law; the unenforceable paragraph, subparagraph, or provision shall first be construed or interpreted, if possible, to render it enforceable, and, if that is not possible, then the provision shall be severed and disregarded, and the remainder of this Agreement shall be enforced to the maximum extent permitted by law.

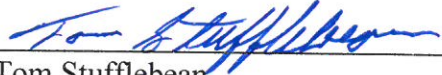
8. **EFFECTIVE DATE.** Stufflebean has been allowed, but is not required to use, twenty-one (21) days from the date of receiving this document to consider whether or not to execute this Agreement. In the event of such execution, Stufflebean has thereafter a period of seven (7) days from the date of execution in which to revoke such execution, in which case this Agreement shall become null and void and neither party shall have any obligation under this

Agreement. This Agreement shall not become effective or enforceable prior to the expiration of such seven (7) day period. The parties agree that any changes to this agreement, whether material or immaterial, do not restart the running of the twenty-one (21) day period provided for in this Paragraph.

9. **COUNCIL APPROVAL.** The parties further agree that this Agreement is subject to the approval of the City Council and shall not be binding on either party unless and until this approval is granted.

10. **SAVINGS CLAUSE.** Should any provision or article of this Agreement be found unlawful, the other provisions of this Agreement shall remain in force and effect.

11. **TERMS AND CONDITIONS.** Stufflebean acknowledges that he has read this Agreement, that he fully understands and appreciates the meaning of this Agreement, that it fully reflects the entirety of the agreement between the parties, that no representation, inducement, or warranty has been made to him by or on behalf of the City except as set forth herein, that he has had the opportunity to consult competent legal counsel of his selection, and that he KNOWINGLY and VOLUNTARILY enters into this Agreement and agrees to comply with its terms and conditions.



Tom Stufflebean

Date: 6-9-14

Jim Vollmer, Human Resource Director
FOR THE CITY

Date: _____

Matt Bemrich, Mayor

Date: _____

FOR THE CITY

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