

SETTLEMENT, RELEASE AND WAIVER OF CLAIMS AGREEMENT

This Settlement, Release and Waiver of Claims Agreement (the "Agreement") is effective as of the last signature appearing below ("Effective Date") and is made between Curtis Bauers ("Bauers") and the City of Brighton ("Brighton"). Bauers and Brighton are collectively referred to herein as the "Parties;" and

WHEREAS, Bauers was employed by Brighton as its Director of Utilities from approximately August 14, 2014 to September 17, 2018; and

WHEREAS, Bauers has engaged counsel and threatened to file a civil action against Brighton and certain of its agents and employees which would include, but not be limited to, claims under 42 U.S.C. § 1983 for alleged First Amendment retaliation and Fourteenth Amendment Due Process violations, alleged defamation by City Council members, and wrongful termination; and

WHEREAS, the Parties seek to completely and forever resolve and settle all Bauers' claims, disputes, complaints, demands, and disagreements related in any way to his employment or termination from employment with Brighton, and

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to be legally bound by the following terms and conditions.

AGREEMENT

1. CONSIDERATION

In exchange for the covenants and promises contained herein, and provided that Bauers complies with all the terms of this Agreement, Brighton agrees as follows: Brighton will authorize payment by its insurance carrier (CIRSA) to Bauers the sum of \$197,743.00 (one hundred and ninety-seven thousand, seven hundred and forty-three dollars) (the "Settlement Payment"), payable to "Killmer, Lane & Newman COLTAF account", which will be sent to David Lane, his legal counsel and a form 1099 will be issued. The Settlement Payment is to be paid entirely by CIRSA, with no portion to be paid by Brighton, and to be sent to Bauers' legal counsel within fourteen days after completion of all of the following: (1) the Parties execution of this Agreement, and the period to revoke the Agreement, as expressly set forth below in this Agreement, having expired.

Bauers acknowledges that Bauers has no right to the Settlement Payment or other benefits set forth in this Agreement but for Bauers' execution of this Agreement.

Bauers agrees that Brighton has not made any representations regarding the tax consequences of any amounts paid pursuant to this Agreement. Bauers understands and agrees that any and all tax liability that may be due or become due because of the payment referenced above is his sole responsibility, and that he will pay any such taxes that may be due or become due. Bauers also agrees to defend, indemnify, and hold Brighton harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments, or recoveries by any governmental entity against

Bauers for any amounts claimed due on account of this Settlement Payment or pursuant to claims made under any federal or state tax laws, and any costs, expenses, or damages sustained by Bauers by reason of any such claims, including any amounts paid by Bauers as taxes, required withholdings, attorneys' fees, deficiencies, levies, assessments, fines, penalties, interest, or otherwise.

2. BAUERS' AGREEMENTS

A. General Release of All Claims: The term "**Brighton Releasees**" shall be construed as broadly as possible and includes Brighton, Brighton's current and former City Council members and Mayor, and all affiliates, successors, predecessors, and, as to each of them, its current and former officers, administrators, elected officials, employees, agents, attorneys, representatives, heirs, and assigns, including, without limitation: Philip Rodriguez, and all other persons acting by, through, under, or in concert with any of them. In exchange for the Settlement Payment, Bauers, for himself, his spouse, his marital community (if any), his agents, his attorneys, his assigns, and his respective heirs, estates, representatives, and executors, does hereby fully, forever, irrevocably, and unconditionally release and discharge the **Brighton Releasees** from any and all claims, actions, and causes of action of any kind which Bauers may presently have or may hereinafter have against any of the **Brighton Releasees** which could have arisen out of any act or omission occurring from the beginning of time to the Effective Date of this Agreement, whether now known or unknown, asserted, or unasserted, and includes, but is not limited to: all claims arising in law or equity; all claims under the United States or Colorado laws or constitutions; claims under 42 U.S.C. §1983 and 1988; all contract claims; all wrongful discharge or employment claims; all common law claims; all tort claims; all claims under the 1964 Civil Rights Act, the Age Discrimination in Employment Act of 1967, Equal Pay Act, Rehabilitation Act, Americans with Disabilities Act, Family and Medical Leave Act, Fair Labor Standards Act, Fair Credit Reporting Act, Worker Adjustment Retraining and Notification Act, Immigration Reform and Control Act, Occupational Safety and Health Act, National Labor Relations Act, Colorado Wage Payment Act, and the Colorado Anti-Discrimination Act; all claims arising under any other civil rights, employment and workers compensation laws or regulations (whether federal, state or local); any federal or state law, including any whistleblower laws or statutes; any claims based on Brighton policies; and, all claims for attorney fees or costs.

In waiving and releasing any and all claims set forth in this Agreement, whether or not now known to him, Bauers understands that this means that, if he later discovers facts different from or in addition to those facts currently known or believed to be true by Bauers, the waivers and releases of this Agreement will remain effective in all respects - despite such different or additional facts - and even if Bauers would not have agreed to this Agreement if he had prior knowledge of such facts. Bauers expressly, knowingly, and intentionally waives the benefits and rights of any statute, rule, doctrine, or common law principle of any jurisdiction whatsoever that provides that a general release does not extend to unknown claims.

B. Filing Claims in Future: Bauers represents he has not filed any charge or claim, including without limitation a workers' compensation claim or complaint of any kind against the **Brighton Releasees**. However, this provision does not prohibit any of the Parties from participating in an

investigation before any governmental agency charged with enforcement of any law, including, but not limited to, the Equal Employment Opportunity Commission, or any federal, state or local agency. By signing this release, however, Bauers waives any right to recover monetary damages or other individual relief from the **Brighton Releasees** in connection with any such charge he files or investigation in which he participates. Moreover, this Agreement does not prohibit the Parties from providing truthful testimony in a court of law, or, pursuant to subpoena, from testifying or responding as otherwise required or provided for by law, or in seeking to enforce their rights under this Agreement. Nothing in this Agreement shall prohibit the Parties to this Agreement from bringing an action to enforce the terms of this Agreement.

C. Non-Assignment of Claims: Bauers has not assigned or transferred any claim or any part or portion thereof (“Assigned Claim”). Bauers shall defend and indemnify the **Brighton Releasees** and hold the **Brighton Releasees** harmless from and against any Assigned Claim (including attorneys’ fees and costs).

D. Representations: Bauers represents and warrants that he has been fully compensated for his services and employment while employed by Brighton, including any and all wages, overtime pay, vacation, and other compensation to which Bauers was or is entitled. Bauers represents and warrants that Bauers knows of no facts and has no reason to believe that Bauers’ rights under the Fair Labor Standards Act, any Workers Compensation Act, the Family and Medical Leave Act, or Colorado Wage Payment Act have been violated.

E. No-Rehire: Bauers agrees not to apply for employment with the City of Brighton and that if he does so, his application may be summarily rejected without liability as to Brighton or its agents.

F. Medical Insurance, Medicare & Medicaid Warranty: Bauers represents that he is not a Medicare or Medicaid beneficiary. Bauers agrees to defend, indemnify, and hold **Brighton Releasees**, including Brighton, harmless for any penalties or liability, including interest, that may be asserted against it pursuant to Section 111 of the Medicare, Medicaid, and SCRIP Extension Act of 2007, 42 U.S.C. § 1395y(b)(8) as a result of the payments described in this Agreement. Bauers also agrees to defend and indemnify the Brighton Releasees from and for any claims asserted by anyone for reimbursement of any medical or related healthcare treatment expense that relates to any of the harm alleged by Bauers.

G. Covenant Not to Sue. Except as otherwise provided in Paragraph 2.B., the Parties specifically covenant not to file any civil actions in any state or federal court or before any federal or state agency against an adverse party for any and all of the claims released by this Agreement.

H. Injunctive and Other Relief: Bauers agrees and acknowledges that any violation of any provision of this Section 2 shall constitute a material breach of this Agreement likely to cause irreparable harm to **Brighton Releasees**. Therefore, Bauers agrees that any such breach or threatened breach by Bauers shall give **Brighton Releasees** the right to specific performance through injunctive relief requiring Bauers to comply with Bauers’ obligations under this Agreement in addition to any other relief or damages allowed by law. In addition, if any of the **Brighton Releasees** have reason to seek injunctive or other legal relief to enforce any provision of this Section 2, they may seek recovery of the Settlement Payment and any other consideration

paid to Bauers, plus interest, attorney's fees, and costs. Any recovery of the paid Settlement Payment or other paid consideration shall not void Bauers' release of claims under this Agreement, which shall remain in full force and effect.

3. BRIGHTON'S RELEASE OF BAUERS

Brighton hereby releases Bauers, his heirs, his agents, his attorneys, and his assigns ("**Bauers Releasees**") from all civil claims and causes of action of any kind, known or unknown, which Brighton may presently have against the Bauers Releasees, except for any claims for breach of this Agreement or that arise after the effective day of this Agreement. The Parties agree and specifically reserve and exclude from the scope of this release by Brighton any and all criminal prosecutions commenced by any governmental entity.

4. DENIAL OF LIABILITY

Brighton, and the **Brighton Releasees** deny any wrongdoing and any liability to Bauers. The Parties agree that this Agreement does not constitute an adjudication or finding on the merits; and is not, and shall not be construed as, an admission by Brighton, or any of the **Brighton Releasees** of a breach of any law or duty owed to Bauers, a violation of Brighton's policies and procedures, or a violation of any state or federal laws or regulations. After execution (including signatures by both Bauers and Brighton), this Agreement may be introduced in evidence to enforce its terms.

5. CHANGE OF TERMINATION STATUS AND RECOMMENDATION LETTER FOR BAUERS

Brighton will modify Bauers' personnel file to change his termination to a resignation from his employment with Brighton retroactive to September 17, 2018. Brighton will also provide Bauers a recommendation letter in the form attached hereto as Exhibit A.

6. INPUT FROM BOTH PARTIES

The terms of this Agreement have been negotiated with input from both Bauers and Brighton. The Agreement shall not be interpreted in favor of either Bauers or Brighton.

7. OPPORTUNITY TO REVIEW AND REVOKE AGREEMENT

A. REVIEW PERIOD: Bauers hereby acknowledges and represents that: (i) Bauers has been given a period of at least twenty-one (21) days to consider the terms of this Agreement; (ii) Bauers is represented by legal counsel and that he has conferred with his legal counsel before entering into this Agreement; (iii) Bauers and his attorney have reviewed this entire Agreement and have approved it; and (iv) Bauers has received good and valuable consideration to which he is otherwise not entitled in exchange for his execution of this Agreement. In the event Bauers signs this Agreement and returns it to Brighton in less than the twenty-one (21) day period identified above, Bauers hereby acknowledges that he has freely and voluntarily chosen to waive the time period allotted for considering this Agreement.

B. REVOCATION PERIOD: The Parties hereby acknowledge that Bauers may revoke this Agreement within seven (7) days after he has executed the Agreement and the Agreement shall not become effective or enforceable until the eighth (8th) day after Bauers executes the Agreement, and the other conditions set forth above in section 1 have been fulfilled. In the event Bauers exercises his option to revoke this Agreement, then he shall notify Brighton's attorney Frank Lopez by email, FLopez@GVLSLaw.com, no later than 5:00 p.m. on the last day of the revocation period.

8. ENTIRE AGREEMENT

This Agreement is an integrated document and constitutes and contains the entire agreement and understanding between the Parties and supersedes and replaces all prior negotiations and all agreements concerning the subject matters hereof.

9. SEVERABILITY

The provisions of this Agreement are severable. If any provision of this Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provisions or application.

10. CHOICE OF LAW, ATTORNEY'S FEES AND JURY TRIAL WAIVER

This Agreement has been negotiated within the State of Colorado and the rights and obligations of the Parties to this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Colorado without regard to any jurisdiction's principles of conflict of laws. In any action brought to enforce this Agreement, the substantially prevailing party shall be awarded its or his reasonable legal fees (including, but not limited to, attorney, paralegal, and expert fees) and costs, to the maximum extent permitted by law, and the action shall be tried to a court without a jury. Any action arising under or related to this Agreement shall be brought exclusively in the state or federal courts in Colorado.

11. NO WAIVER OF BREACH

A waiver of any breach of any term or provision of this Agreement shall not be binding unless in writing and signed by the party waiving the breach.

12. KNOWING AND VOLUNTARY WAIVER

Bauers has carefully read and fully understands all of the provisions of this Agreement. Bauers knowingly and voluntarily enters into this Agreement with advice of counsel.

13. ADDITIONAL ASSURANCES

The Parties agree to cooperate fully and to execute any additional documents and to take all additional actions that may be necessary or appropriate to give full force to the terms of this Agreement.

14. HEADINGS NOT BINDING, ORIGINALS AND COPIES

The use of headings in this Agreement is only for ease of reference and the headings have no effect and are not to be considered part of or terms of this Agreement. This Agreement may be executed in counterparts. A photocopy or scanned copy of this Agreement shall be as effective as an original.

15. BAUERS' COOPERATION WITH OTHER LEGAL MATTERS.

Bauers may have factual information or knowledge that may be useful to Brighton in connection with current or future audits, investigations, legal, regulatory, or administrative proceedings. Bauers will fully cooperate with Brighton in connection with such matters, including the investigation, defense, or prosecution of any such claims. Bauers' cooperation shall include being reasonably available to meet with Brighton staff, or legal counsel to prepare to provide truthful information and to testify truthfully as a witness. Brighton will not compensate Bauers for testifying as a fact witness, but may reimburse him for reasonable expenses associated with travel, meals, lodging, or other out of pocket expenses. In all litigation or legal matters, Bauers shall testify truthfully.

16. SETTLEMENT APPROVAL

Subject to the required approval by Brighton's City Council of this Settlement Agreement, the parties intend this Settlement Agreement to be a final written agreement. If the Brighton City Council does not approve the terms of the settlement agreement, then it is deemed null and void.

[SIGNATURE PAGE TO FOLLOW]

BAUERS HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL THE TERMS OF THIS AGREEMENT. BAUERS REPRESENTS THAT HE IS ENTERING INTO THIS AGREEMENT VOLUNTARILY AND REPRESENTS THAT HE IS NOT RELYING ON ANY REPRESENTATION OR UNDERSTANDING NOT STATED IN THIS AGREEMENT.

Curtis Bauers

Date: _____

Bauers' counsel as to form:

David Lane, Esq.

Date: _____

City of Brighton

By: Marv Falconburg
Title: Acting City Manager

Date: _____

City of Brighton's City Attorney as to form:

Jack D. Bajorek, Esq.

Date: _____

City of Brighton's counsel as to form:

Frank Lopez, Esq.

Date: _____

EXHIBIT A



City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303-655-2000
www.brightonco.gov

December __, 2019

Dear Sir or Madam:

Please accept this letter of reference on behalf of Curtis Bauers. Curtis was hired in July 2014 as the Director of Utilities for the City of Brighton, Colorado. Under his leadership, the Utilities Department made great strides during a period of rapid growth. With his guidance and leadership, the Department earned three regional project excellence awards from the American Public Works Association during this time. He also mentored staff in earning multiple outstanding performance awards from the American Water Works Association. I, on behalf of the City of Brighton, would recommend Mr. Bauers for any position he may be interested in pursuing.

Sincerely,

Marv Falconburg
Interim City Manager
City of Brighton