

SEVERANCE AGREEMENT

This Severance Agreement (“Agreement”) is entered into this ____ day of November, 2016, between Jennifer Kretsch (“Employee”) and the City of Victoria (“Employer”).

RECITALS

- A. Employee voluntarily terminated her employment with Employer effective November 30, 2016.
- B. Employee and Employer desire to resolve all of Employee’s and Employer’s potential claims against each other.
- C. Attached as **Exhibit “A”** is an accompanying Release of Claims (“Release”) which is incorporated herein by reference and made part of this Agreement as if fully set forth herein.
- D. Attached as **Exhibit “B”** is a letter of reference that Employer agrees to execute as additional consideration for Employee entering into this Agreement after the effective date of this Agreement.
- E. Employee acknowledges that the consideration the Employer is providing to her to execute this Agreement and the accompanying Release is consideration that she is otherwise not entitled to receive from the Employer.

AGREEMENT

For the consideration described below, the adequacy of which the parties acknowledge, the parties agree as follows:

1. **Release by Employee.** At the same time that Employee executes this Agreement, Employee shall execute the Release that is attached as **Exhibit A** (the “Release”).

2. **Severance Benefits.** As consideration for Employee executing this Agreement, subject to the conditions set forth in this Agreement, Employer agrees to pay Employee a total payment of \$63,000.00. Payment shall be as follows:

a. Immediately after expiration of the rescission periods in Exhibit A, paragraph 4, and by no later than December 15, 2016, the City will issue a check:

i. payable to Jennifer Kretsch in the gross amount of \$27,250.00, minus applicable federal and state taxes, employment taxes and other customary withholdings. The City will issue a W-2 to Employee reflecting such payment by no later than January 31, 2017;

ii. payable to Melchert Hubert Sjodin, P.L.L.P., in the amount of \$8,500.00, and sent to Kelly C. Dohm, Melchert Hubert Sjodin, P.L.L.P., 121 West Main St., Suite 200, Victoria, MN 55387. The City will issue a form 1099 to Melchert, Hubert, Sjodin, P.L.L.P, related to this payment no later than January 31, 2017.

b. By no later than January 30, 2017, the City will issue a check to Jennifer Kretsch in the gross amount of \$27,250.00, minus applicable federal and state taxes, employment taxes and other customary withholdings. The City will issue a W-2 to Employee reflecting such payment by no later than January 31, 2018.

Employee acknowledges and agrees that the severance payment amounts identified above includes all amounts owed to her by Employer for accrued, but unused, sick and vacation leave benefits to which Employee is entitled.

3. **Continuation of Health Insurance/Other City Benefits.** Employee shall receive employer-paid health insurance through November 30, 2016. Thereafter, Employee

is entitled to continuation of her health insurance benefits pursuant to the Consolidated Omnibus Reconciliation Act (“COBRA”), or Insurance Continuation pursuant to Minn. Stat. § 471.61, subd. 2b. If Employee elects to continue her coverage, she is responsible for payment of her health insurance premiums. Employee understands and agrees, however, that after the effective date of her separation from employment on November 30, 2016, she will no longer be eligible for any Employer paid benefits including: dental insurance, life insurance, and short and long-term disability insurance coverage.

4. Return of Employer Property. Employee represents and warrants that she does not have any property belonging to Employer in her possession, custody, or control.

5. Consideration and Rescission. The periods described in the Release during which Employee may consider whether to sign or may rescind the Release, and the procedures stated in the Release for accepting or rescinding the Release, also apply to this Agreement. The Release and this Agreement must be accepted or rescinded together. Rescission of one of these documents will be deemed a rescission of both.

6. Duties, Pending and Future Claims. Employee agrees to the following through December 31, 2016, without being paid any additional compensation: 1) she will cooperate with Employer in any claims or lawsuits about which she may have knowledge of facts involved; and 2) she will voluntarily make herself readily available to discuss business matters as requested by Employer and to testify regarding facts known to her and her knowledge regarding the claims or lawsuits. After December 31, 2016, if the Employer seeks Employee’s assistance, including possible testimony, with any claims or lawsuits about which she may have knowledge, Employer shall compensate employee at the rate of \$31.31 per hour. Finally, Employee agrees that she will not voluntarily aid, assist or cooperate with

anyone who has claims or lawsuits against Employer. The parties acknowledge that this provision of the Agreement does not mean that Employee is in any way prevented from testifying truthfully at an administrative hearing, arbitration, deposition or in court if she is properly served with a lawful subpoena in any proceeding involving Employer. Employee agrees to promptly advise Employer of any compulsory process served upon her.

7. **Non-Admission.** Nothing in this Agreement or the Release (**Exhibit A**) is intended to be, nor will it be deemed to be, an admission by Employer or Employee that either party has violated any law or that either party has engaged in any wrongdoing.

8. **Entire Agreement.** This Agreement, the Release (**Exhibit A**), and the Letter of Reference (**Exhibit B**), supersedes all prior oral and written agreements, representations, and promises between the parties. This Agreement, the Release (**Exhibit A**), and the Letter of Reference (**Exhibit B**) constitutes the entire agreement between the parties with respect to Employee's employment with Employer and the voluntary separation of that employment.

9. **Voluntary and Knowing Action.** The parties acknowledge that they understand the terms of this Agreement and that they are voluntarily entering into this Agreement. The parties intend to be legally bound. Employee represents that she is legally able and entitled to enter into this Agreement and to receive the payments described in paragraph 2 above. Employer represents that it is legally able to enter into this Agreement and able to make the payments described above in paragraph 2.

10. **21-Day Period to Consider Agreement.** Employee understands that, pursuant to the Age Discrimination in Employment Act, she has 21 days to consider this Agreement and seek the advice of her attorney and/or financial advisor. Employee understands that if she signs this Agreement and Release prior to the expiration of the 21-day

period, that she is voluntarily waiving her right to consider the Agreement and Release for 21 days.

11. Mutual Non-Disparagement. Employee agrees not to make or communicate disparaging remarks of any sort, whether oral, written, or otherwise, about the City's employees or council members to any other individual, entity, or third party. The current city manager and council members agree to not make or communicate disparaging remarks of any sort, whether oral, written, or otherwise about Employee to any third party, provided that this covenant does not prohibit Employer, including its city manager and council members, for complying with the Employer's obligations under the Minnesota Government Data Practices Act. Employer's obligation to comply with the Minnesota Government Data Practices Act is exempt from the covenants contained in this provision. Both parties agree that if asked about this matter, they may indicate that the matter has been resolved.

12. Minnesota Law Applies. The terms of this Agreement and the Release (**Exhibit A**) will be governed by the laws of the State of Minnesota and shall be construed and enforced thereunder.

13. Binding Upon Heirs and Successors. This Agreement and the Release (**Exhibit A**) shall be binding upon and shall inure to the benefit of Employee and Employer and their respective heirs, administrators, representatives, executors, successors and assigns.

14. Recitals. The recitals and **Exhibits A** and **B** referenced at the beginning of this Agreement are incorporated herein by reference as if fully set forth herein.

15. Effective Date of this Agreement and Release. This Agreement and the attached Release (**Exhibit A**) shall not become effective and enforceable until all of the following conditions are met: 1) the Employee signs the Agreement and the Release (**Exhibit**

A), within the time period described in this Agreement; and 2) the revocation periods of seven (7) and fifteen (15) days expire without any attempt by the Employee to rescind.

16. **Release of Claims by Employer.** Employer hereby releases and forever discharges Employee from any and all known or unknown past or present claims, demands, obligations, actions, damages and expenses of any nature based in tort, contract or other theory of recovery, and whether for compensatory, punitive or some other form of damages and/or attorneys' fees, including but not limited to, claims in connection with Employee's employment with and/or separation of employment from Employer.

17. **References.** Employer agrees, as additional consideration for Employee entering into this Agreement, to provide the attached letter of reference marked as **Exhibit B** to this Agreement within five (5) days after the expiration of the revocation periods.

18. **Reasons for Agreement.** Pursuant to Minn. Stat. § 13.43, subd. 2(a)(6), the Employer states that the reason it is entering into this Agreement is to amicably separate the employment relationship with Employee, and provide her with certain benefits in light of her resignation from employment.

19. **Headings.** The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

EMPLOYEE:

Dated: _____

Jennifer Kretsch

EMPLOYER:

CITY OF VICTORIA

Dated: _____

By: _____

Its: _____

EXHIBIT "A"
RELEASE BY JENNIFER KRETSCH

1. **Definitions.** I intend all words used in this Release to have their plain meanings in ordinary English. Specific terms that I use in this Release have the following meanings:

- A. I, me, and my include both me and anyone who has or obtains any legal rights or claims through me.
- B. City means the City of Victoria; the present and past administrators, clerks, council members, elected officials, attorneys, and employees of the City of Victoria; the present and past fiduciaries of any employee benefit plan sponsored or maintained by the City of Victoria (other than multiemployer plans); and anyone who acted on behalf of the City of Victoria or on instructions from the City of Victoria.
- C. Agreement means the Severance Agreement between the City and me that I am executing on the same date on which I execute this Release.
- D. My Claims mean all of my rights that I now have to any relief of any kind from the City, including without limitation:
 - i. all claims arising out of or relating to my employment with the City in any capacity including, but not limited to, my employment with the City as City Clerk;
 - ii. all claims arising out of or relating to the statements, actions, or omissions of the City;
 - iii. all claims for any alleged unlawful discrimination, harassment, retaliation or reprisal, or any alleged unlawful practices arising under

any federal, state, or local or municipal statute, ordinance, or regulation, including without limitation, claims under Title VII of the Civil Rights Act of 1964, MINN. STAT. § 13.01, et. seq. and 13D.01 et. seq., the Open Meeting Laws, the Federal Constitution of the United States, Minnesota's State Constitution, the Americans with Disabilities Act, the Americans with Disabilities Act Amendments Act, 42 U.S.C. § 1981, the Age Discrimination in Employment Act, The Older Worker's Benefits Protection Act, the Government Data Practices Act, the Employee Retirement Income Security Act, the Equal Pay Act, the City's Personnel Policies and ordinances, the Worker Adjustment and Retraining Notification Act, the Minnesota Human Rights Act, the Fair Credit Reporting Act, the Fair Labor Standards Act, the Veterans' Preference Act, the Uniform Services Employment and Reemployment Rights Act, Minnesota State Wage and Hour Laws, the Family and Medical Leave Act, Loudermill hearing rights, any rights pursuant to Garrity v. State of New Jersey, 385 U.S. 493 (1967), Public Employee Labor Relations Act, Genetic Nondiscrimination Act, any rights under MINN. STAT. § 465.722, and workers' compensation non-interference or non-retaliation statutes (such as MINN. STAT. § 176.82);

- iv. all claims for alleged wrongful discharge; breach of contract, breach of implied contract; failure to keep any promise; breach of a covenant of good faith and fair dealing; breach of fiduciary duty; estoppel; my activities, if any, as a "whistleblower"; defamation; negligent and

intentional infliction of emotional distress; fraud; misrepresentation; hostile work environment; negligence; harassment; retaliation or reprisal; constructive discharge; assault; battery; false imprisonment; invasion of privacy; interference with contractual or business relationships; any other wrongful employment practices; and violation of any other principle of common law;

- v. all claims for compensation of any kind, including payout of accrued, but unused, vacation, sick time, paid-time off, and compensatory time off;
- vi. all claims for back pay, front pay, reinstatement, other equitable relief, compensatory damages, damages for alleged personal injury, liquidated damages, and punitive damages;
- vii. all claims related to any illness, injury, or other health-related concerns allegedly arising out of environmental conditions in the workplace; and
- viii. all claims for attorney's fees, costs, and interest.

However, My Claims do not include any claims that the law does not allow to be waived or any claims that may arise after the date on which I sign this Release.

2. Agreement to Release My Claims. I will receive consideration from the City as set forth in the Severance Agreement if I sign and do not rescind this Release as provided below and provided that I meet the other conditions as specified in the Severance Agreement, including execution of the Severance Agreement. I understand and acknowledge that the

consideration I am receiving to execute the Severance Agreement and Release is money in addition to anything of value that I would be entitled to receive from the City if I did not sign this Release or if I rescinded this Release. In exchange for that consideration, I give up all of My Claims. I will not bring any lawsuits against the City or make any demands against the City for compensation or damages relating to My Claims. The consideration that I am receiving is a fair compromise for the release of My Claims.

3. Additional Agreements and Understandings. Even though the City will provide consideration for me to settle and release My Claims, the City does not admit that it is responsible or legally obligated to me. In fact, the City denies that it is responsible or legally obligated to me for My Claims, denies that it engaged in any unlawful or improper conduct towards me, and denies that it treated me unfairly.

4. My Right to Rescind this Release. I understand that I may rescind (that is, cancel) this Release and accompanying Severance Agreement with respect to claims arising under the Minnesota Human Rights Act within 15 calendar days of signing it, and with respect to claims arising under the Age Discrimination in Employment Act and the Older Worker's Benefits Protection Act within seven (7) calendar days of signing it. This Release and accompanying Severance Agreement will not become effective or enforceable unless and until the rescission period has expired without my exercising my rights to rescind and all of the conditions have been met as set forth in provision 13 of the Severance Agreement.

5. Procedure for Accepting or Rescinding the Release. To accept this Release, I must deliver this signed Release and the attached Severance Agreement to the City at the address indicated below. To rescind my acceptance, I must deliver a written, signed statement that I rescind my acceptance to the City by hand or by mail within the rescission period set forth

above. All deliveries or communications required to be made under this Release or accompanying Severance Agreement must be made to the City at the following address:

Attn: Laurie Hokkanen, City Manager
City of Victoria
1670 Stieger Lake Lane
Victoria, MN 55386

If I choose to deliver my acceptance or the rescission of my acceptance by mail, it must be:

- A. postmarked within the period stated above; and
- B. properly addressed to the City at the address stated above.

6. Interpretation of the Release. This Release should be interpreted as broadly as possible to achieve my intention to resolve all of My Claims against the City. If this Release is held by a court to be inadequate to release a particular claim encompassed within My Claims, this Release will remain in full force and effect with respect to all the rest of My Claims.

7. My Representation. I am legally able and entitled to receive the consideration being provided to me in settlement of My Claims. I have not been involved in any personal bankruptcy or other insolvency proceedings at any time since I began my employment with the City. No child support orders, garnishment orders, or other orders requiring that money owed to me by the City be paid to any other person are now in effect.

I have read this Release carefully. I understand all of its terms. In signing this Release, I have not relied on any statements or explanations made by the City except as specifically set forth in the Severance Agreement. I am voluntarily releasing My Claims against the City. I intend this Release and the Severance Agreement to be legally binding.

Dated: _____, 2016

Jennifer Kretsch

[TO BE PLACED ON CITY OF VICTORIA'S LETTERHEAD]

December 1, 2016

Re: Jennifer Kretsch

To Whom it May Concern:

Ms. Jennifer Kretsch was employed at the City of Victoria from June, 2001, through November 30, 2016. During her employment with the City, Ms. Kretsch was employed full-time as the City Clerk.

Very truly yours,

Laurie Hokkanen
City Manager
City of Victoria