

Exhibit 1

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is entered into by and between Adam Fulton (“Fulton”), the City of Duluth Supervisory Association (“CDSA”), and the City of Duluth (“the City”) (collectively the “Parties”) and is effective on the date signed by all Parties.

**Recitals**

WHEREAS, The City and CDSA are parties to a 2022-2024 Collective Bargaining Agreement (“CBA”);

WHEREAS, Fulton was employed by the City as the Deputy Director of Planning and Economic Development until May 4, 2024;

WHEREAS, Fulton’s job position was eliminated by the City and CDSA filed a grievance over the elimination of Fulton’s position and his subsequent separation from employment (“the Grievance”);

WHEREAS, the City denied CDSA’s Grievance in its entirety;

WHEREAS, the Parties mediated their dispute with the assistance of the Bureau of Mediation Services on August 21, 2024; and,

NOW THEREFORE, the Parties wish to resolve their disputes related to the Grievance and Fulton’s separation from employment in accordance with the terms and conditions specified in this Agreement.

**Agreement**

**Article I. Consideration and Settlement Sum**

1. In consideration for CDSA’s withdrawal of its Grievance under Article II and Fulton’s waiver and release of claims described in Article III, the City agrees to pay Fulton a total lump sum payment of \$75,000.00 (“Settlement Sum”).
2. The Settlement Sum shall be paid to Fulton in the regular manner of issuing payroll no later than fifteen (15) calendar days after the expiration of the Recission Period described in Article IV and such payment shall be subject to any applicable payroll deductions and withholdings.
3. The Parties acknowledge and agree that the Settlement Sum and all other mutual promises contained in this Agreement are sufficient and adequate consideration for the withdrawal of the Grievance and waiver and release of all claims by Fulton, personally, as against the City.

4. The Settlement Sum reflects a payment made to resolve disputed claims and the Parties agree Fulton is not otherwise entitled to the Settlement Sum.
5. Fulton acknowledges timely receipt of all wages and benefits due to him by the City through the date of his signing of this Agreement and that there are no other sums due to him from the City.

## **Article II. Withdrawal of Grievance**

1. CDSA's withdrawal of its Grievance is contingent upon the expiration of the Rescission Period described in Article IV. If this Agreement is rescinded by Fulton within the Rescission Period under Article IV, CDSA's Grievance shall not be withdrawn and shall continue in accordance with the terms of the CBA. If this Agreement is not rescinded by Fulton within the Rescission Period, CDSA agrees that its Grievance is withdrawn upon the expiration of the Rescission Period.
2. CDSA's withdrawal of the Grievance does not establish any precedent or practice and shall not be used by any party in any contested proceeding involving CDSA or any CDSA represented employee.

## **Article III. Fulton's Waiver and Release of Claims**

1. In consideration of receipt of the Settlement Sum, Fulton knowingly and voluntarily waives his right to pursue and releases the City and its affiliated officers, agents, and representatives, fully and finally from any and all claims, demands, actions, liabilities, or rights of any kind, whether known or unknown, that he has or may assert that arise out of or relate to his employment with the City, including, but not limited to, claims arising under the City's charter, ordinances, personnel policies, Title VII of the Civil Rights Act, Family and Medical Leave Act, Americans with Disabilities Act, Rehabilitation Act of 1973, 42 U.S.C. § 1983, Age Discrimination in Employment Act, Veterans Preference Act, Minnesota Human Rights Act, Public Employment Labor Relations Act, Minnesota Occupational Health and Safety Act, Minnesota Whistleblower Act, the Minnesota and Federal Fair Labor Standards Acts, Minnesota Government Data Practices Act, Minnesota Open Meeting Law, and common law, along with attorney's fees or costs.
2. Fulton's waiver and release of claims described in paragraph 1 above does not encompass or apply to: (i) any waivers or releases prohibited by or ineffectual under law, (ii) any claims related to workers' compensation or Public Employees Retirement Association benefits, (iii) acts or occurrences that arise out of or occur after the effective date of this Agreement, (iv) Fulton's re-employment rights under Article 30 of the CBA, or (v) any legal obligation for the City to defend and indemnify Fulton under Minn. Stat. §466.07.

In addition, Fulton understands that nothing in this Agreement prohibits him from filing a charge or complaint with the Equal Employment Opportunity Commission ("EEOC"), or equivalent State agency, including a challenge to the validity of this Agreement, or from participating in any investigation or proceeding conducted by the EEOC, or equivalent State agency, provided however, that Fulton waives his right to any personal monetary

recovery in any suit, charge, or complaint, including compensatory, punitive, or liquidated damages, brought to the EEOC or equivalent State agency or brought on his behalf by the EEOC or equivalent State agency.

3. The City shall continue to provide Fulton with health insurance coverage through the end of September 2024, in accordance with Article 18 of the CBA, and Fulton's waiver of claims under paragraph 1 above shall not be construed to alter or diminish the City's share of the cost of such health coverage through the end of September 2024.

#### **Article IV. Rescission Period**

1. Fulton has twenty-one (21) calendar days to consider and sign this Agreement under the Age Discrimination in Employment Act, 29 U.S.C § 621, *et seq.* If he signs this Agreement, he may rescind/ revoke this Agreement within fifteen (15) calendar days of his signing this Agreement. This fifteen-day period ("Rescission Period") encompasses and surpasses the seven (7) day rescission period provided under Federal law and complies with the rescission period required under the Minnesota Human Rights Act.
2. To be effective, Fulton's rescission of this Agreement must be in writing and delivered to:

David Montgomery  
City Administrator  
Duluth City Hall, Room 422  
411 West First Street  
Duluth, MN 55802

within the fifteen (15) day Rescission Period. If a notice of such rescission is delivered by mail, it must be: (1) postmarked *within* the fifteen (15) day Rescission Period; (2) properly addressed as set forth above; and (3) sent by certified mail return receipt requested.

3. The City will have no obligations under this Agreement in the event a notice of rescission is properly provided by Fulton within the Rescission Period, as described above.

#### **Article V. No Admission of Liability or Wrongdoing, Agreement is not Evidence**

Neither the City nor Fulton admit to any legal liability or violation of any contract or law, or that it or he has engaged in any wrongdoing in this matter. Nothing in this Agreement shall be construed to be an admission by either the City or Fulton of any liability, violation, or wrongdoing.

No part of this Agreement may be used in any subsequent legal proceeding as evidence to prove or disprove the validity or amount of any disputed claim or to impeach by a prior statement or contradiction.

#### **Article VI. Voluntary and Knowing Action**

1. Fulton acknowledges and agrees that: (i) he has read and understands the contents of this Agreement; (ii) he has been given a fair opportunity to discuss and negotiate the terms of

this Agreement; (iii) **he is advised to consult with an attorney of his choosing before signing this Agreement**; (iv) CDSA properly and adequately represented him in the Grievance and he is entering into this Agreement on his own accord and not relying on statements made by CDSA or its attorney; (v) he agrees with the Agreement's provisions and is voluntarily and without duress entering into this Agreement; and (vi) he has been given at least twenty-one (21) days to consider this Agreement.

2. If Fulton signs this Agreement before the expiration of the twenty-one (21) day period, it is because he has decided voluntarily that he does not need any additional time to decide whether to sign the Agreement.

#### **Article VII. Severability**

The Parties agree that in the event that any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, it is the purpose and intent of the Parties that the court would modify such provision so that the provision may be enforced to the fullest extent possible. Nonetheless, should any provision of this Agreement be held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, and such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement. The Parties agree this Agreement was jointly drafted and does not favor one party over another.

#### **Article VIII. Counterparts and Electronic Signatures**

This Agreement may be executed in counterparts, each of which taken together shall constitute one and the same instrument. Electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, and any electronic signatures shall be deemed original signatures for purposes of enforcement and construction of this Agreement.

#### **Article IX. Governing Law**

This Agreement is interpreted and construed in accordance with Minnesota law.

#### **Article X. Execution and Effective Date**

This Agreement is executed and effective on the latest date affixed to the signatures below.

\_\_\_\_\_ Dated: \_\_\_\_\_  
**Adam Fulton**

**Accepted on behalf of City of Duluth:**

Jessica J. Fralich, City Attorney

and

\_\_\_\_\_ Dated: \_\_\_\_\_  
Robb Enslin  
Assistant City Attorney  
411 West Frist Street, Rm. 440  
Duluth, MN 55802

**City of Duluth Supervisory Association**

\_\_\_\_\_ Dated: \_\_\_\_\_  
CDSA President