

MEDIATED SETTLEMENT AGREEMENT

This Mediated Settlement Agreement, effective as of April 29, 2016, is entered into by and between the following parties (collectively the “Parties”): Plaintiff Mark Tucker (“Tucker”) and City of Duluth (“City”).

RECITALS

WHEREAS, the Parties are engaged in litigation venued in St. Louis County District Court, with case caption: Mark Tucker v. City of Duluth, court file number 69-DU-CV-13-2788 (the “Litigation”); and

WHEREAS, the Litigation involves Tucker’s claims pursued under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01 et seq. (the “MHRA”); and

WHEREAS, the Parties have engaged in mediation of the claims involved in the Litigation under the terms of the Minnesota Civil Mediation Act, Minn. Stat. § 572.31-40; and

WHEREAS, at the conclusion of the mediation, the Parties have agreed to settle all claims which were made or which could have been made in the litigation under the terms set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements set forth below, the above named Parties hereby agree to settle the Litigation, including all claims that were made or which could have been made therein, as follows:

1. The City will pay to Tucker and his attorney a one-time lump sum of \$25,000, such payment is intended by the Parties to compensate Tucker for his costs, disbursements, attorney fees, and emotional distress damages. Tucker understands that delivery of the payment may take up to two weeks following receipt of the district court’s approval as set forth in paragraph 6, below.
2. Tucker’s participation in family coverage in the City’s health insurance plan, in which he and his wife currently participate, will be at the City’s premium expense until Tucker reaches age 65. Thereafter, Tucker’s percentage share of premium contributions shall be at the 12-year vesting level of 40% of premium paid by Tucker, which was his contributions eligibility level on August 15, 2014, his last day of employment with the City.
3. Tucker agrees that he will not apply for any position with the City and further understands that the restriction from such employment is permanent.
4. Tucker shall keep the discussion during mediation and the terms of this settlement confidential, except disclosure may be made to his wife and to his legal and tax advisors, and Tucker assumes responsibility for any unauthorized disclosures. Tucker further understands that the terms of this settlement are classified as public data under Minnesota Statutes §§13.01, et.seq., the Minnesota Government Data Practices Act. The Parties understand that they remain bound by the terms of any protective order issued in this matter.

5. This Settlement is subject to approval by the Duluth City Council. The City agrees to present this Agreement for approval on the council's May 9, 2016 Agenda.

6. This Settlement is also subject to approval by the State district court. The City will promptly petition for such approval following approval by the City Council.

7. Subject to approval of the settlement by the Duluth City Council, the Parties, by and through their legal counsel, agree to execute a Stipulation for Dismissal with Prejudice and Order of Dismissal for presentation to the district court.

8. Except for the obligations created by this Mediated Settlement Agreement, and subject to the approvals of the Duluth City Council and the district court, as provided in paragraphs 5 and 6 of this Agreement, Tucker hereby releases the City, and its employees, agents and assigns, from all other claims, suits, agreements, torts, including but not limited to the claims asserted or which could have been asserted in the Litigation, and includes a release of all claims for any award of any damages, attorneys' fees, costs, or disbursements, for any act, event, or omission occurring any time in the past and up to the effective date, to wit, April 29, 2016.

9. The releases herein do not apply to claims regarding enforcement of this Agreement, and the prevailing party in any such claim shall be entitled to recover attorneys' fees and costs incurred to enforce this Agreement.

10. Each Party has read and understood this Mediated Settlement Agreement. Each Party has had the opportunity to consult with or be represented by legal counsel in this Mediated Settlement Agreement; and each Party will receive and retain a signed copy thereof.

11. The parties hereby acknowledge and agree that this is a legally binding Settlement Agreement and shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, executors, administrators, successors, legal representatives, members, agents and assigns.

12. The Parties agree that this document may be signed and returned via facsimile or email, and that a photocopy, facsimile copy, scanned copy, or email copy shall be deemed an original and may be relied upon and enforced by the Parties. This Mediated Settlement Agreement may also be executed in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

13. The parties have attempted to create an agreement that is lawful and enforceable in all aspects. In the event that any provision of this Mediated Settlement Agreement is found or deemed to be illegal or otherwise invalid or unenforceable, whether in whole or in part, such invalidity shall not affect the enforceability of the remaining terms hereof. This Mediated Settlement Agreement constitutes the entire agreement between the Parties. No other promises or agreements shall be binding unless signed by all Parties. This Mediated Settlement Agreement supersedes and replaces all prior representations, statements, promises, commitments, and agreements between the Parties, whether oral or written, expressed or implied.

STATUTORY NOTICES: The Parties are hereby notified and hereby acknowledge that: (a) the mediator(s) have no duty to protect the parties' interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; (c) the parties should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; and (d) a written mediated settlement agreement is not binding unless it contains a provision stating that the parties were advised in writing of (a) through (c) above.

ACCEPTED AND AGREED BY:

City of Duluth

By: _____
Mayor

Attest: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

Mark H. Tucker

Mark H. Tucker

Date: _____

Approved by Counsel:

Stephanie Balmer
Falsani, Balmer, Peterson, Quinn & Beyer Attorneys At Law

Date: _____