

RESOLUTION 2018-041

PASSED: MARCH 26, 2018.

**AUTHORIZING EXECUTION OF AGREEMENT FOR
RESIGNATION OF CITY MANAGER.**

WHEREAS, the City of DeKalb is a home-rule municipality with the power and authority conferred thereupon by virtue of the Illinois Constitution, the Illinois Municipal Code and the City Code of the City of DeKalb; and,

WHEREAS, the City currently employs Anne Marie Gaura and has determined that it is mutually beneficial and advantageous to approve of the agreed-upon resignation of Gaura pursuant to Section 4(C) of her employment agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: The Mayor of the City of DeKalb is authorized to execute an Agreement, in form and content acceptable to him, providing for the agreed-upon resignation of City Manager Anne Marie Gaura. Said agreement shall reference Section 4(C) of Gaura's employment agreement, and shall provide for the payment of those benefits contemplated by the employment agreement and all other actions required thereby. Said agreement shall not provide for the extension of any compensation or financial benefit not specifically provide for in the employment agreement. Upon execution, City staff shall be authorized and directed to comply with the terms of said agreement. The Mayor is also authorized and requested to approve of a joint press release on terms acceptable to him.

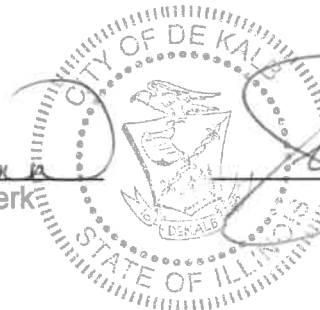
Section 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 26th day of March, 2018, and approved by me as Mayor on the same day. Passed by an 8-0 Omnibus roll call vote under the Consent Agenda. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:


SUSANNA HERRMANN, City Clerk


JERRY SMITH, Mayor



Resignation and Separation Agreement

This Resignation and Separation Agreement (the "Agreement") is entered this 27th day of March, 2018, by and between the City of DeKalb ("the City") and Anne Marie Gaura ("Employee"). To the extent of any conflict between the terms of this Agreement and any other agreement, contract, or policy relating to the terms of this Agreement (including but not limited to collective bargaining agreements and City personnel policies), this Agreement shall supersede and control.

1. Employee and the City are currently parties to an "Amended Employment Agreement" dated November 27, 2017. The Amended Employment Agreement includes provisions that allow termination of Employee's employment upon expiration of the agreement; termination for cause; termination for convenience; voluntary resignation; or an agreed-upon resignation.

2. Pursuant to Paragraph 4(C) of the Amended Separation Agreement, the City and Employee have agreed to undertake a mutually acceptable, agreed-upon resignation. Therefore, as part of the consideration for the benefits set forth in this Agreement, the City and Employee agree that Employee's separation from employment will be considered an "agreed-upon resignation" under said Section 4(C) of the Amended Employment Agreement.

3. Simultaneous with her execution of this Agreement, Employee shall submit a signed, irrevocable notice of her resignation, which is attached as Appendix A. This resignation shall be effective at the close of business on March 27, 2018. The City will report to IMRF that her last date of employment is March 27, 2018.

4. As consideration for this Agreement, Employee shall receive the following severance payments. Employee and the City agree these severance payments are in lieu of and not in addition to the severance payments set forth in her Amended Employment Agreement, and represent the full amount to which Employee is entitled to under her Amended Employment Agreement and this Agreement, or otherwise relating to her employment by the City of DeKalb:

- a. Pay for her normal salary earned through her separation date, less all required deductions and withholdings.
- b. A lump sum payment in the gross amount of \$84,085.98, which is equivalent to six months' salary at Employee's current rate of pay, less all required deductions and withholdings.
- c. Payment at a total value of \$15,107.42 for accumulated and unused vacation time, and payment at a total of \$9,572.86 for accumulated and unused sick time.
- d. These payments will be made after the time period in Section 10(f) below for revocation of the Agreement has lapsed.

- e. COBRA continuing health coverage at Employee's expense.
- f. Employee shall be permitted to utilize her accumulated, employee-funded Flexible Spending Account proceeds in accordance with the City's standard procedures.

5. Other than the payment of wages and benefits accrued prior to the date of this Agreement and the payments contemplated by the preceding section of this Agreement, Employee shall not be entitled to any further or additional compensation of any kind, whatsoever, from the City. Employee's status as an employee of the City shall terminate as of the close of business on March 27, 2018.

6. Employee agrees that she shall immediately return to the City any and all materials, supplies, computers, telephones, uniforms, tools, keys, or other equipment furnished to her by the City. Employee shall also return any badges, business cards, insignia, identifying markers or other credentials which identify her as an employee of the City of DeKalb, and all shirts, jackets, hats or clothing so indicating. Employee shall provide a list of all computer/program/website usernames and passwords used by her to access official software/websites/computers in the performance of her employment as a City of DeKalb employee. All such items shall be returned to the City within seven days of the date of this Agreement.

7. Employee agrees to keep confidential any information she obtained during the course of her employment with the City, other than information which is available to the public or which is required to be disclosed in response to a lawful court order.

8. Employee acknowledges that the benefits, as described in Paragraphs 2, 3, 4, 9, 11, and 14 of this Agreement, constitute valid and sufficient consideration for the promises contained in this Agreement and that the City was not otherwise obligated to provide Employee with such consideration.

9. In further consideration of the promises made by the City and Employee in this Agreement, and except for either party's right to enforce the terms of this Agreement, the City and Employee hereby release and forever discharge the other from any and all actions, causes of action, claims or liabilities of any kind which have or could be asserted against the City or Employee arising out of or related to Employee's employment by the City, including but not limited to:

- a. claims, actions, causes of action or liabilities arising under Title VII of the Civil Rights Acts of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Older Worker Benefit Protection Act; the Employee Retirement Income Security Act, as amended; the Americans with Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as amended; the Fair Labor Standards Act; the Family Medical Leave Act; the Fair Labor Standards Act; the National Labor Relations Act; the Consolidated Omnibus Budget Reconciliation Act; the Employee Retirement Income Security Act of

1974, as amended; the Federal Occupational Safety and Health Act; the Illinois Public Labor Relations Act; the Illinois Human Rights Act (including any claims of retaliation); the Illinois Equal Pay Act; the Illinois Victims' Economic Security and Safety Act; the Illinois Minimum Wage Act; the Illinois Wage Payment and Collection Act and/or any other federal, state, or municipal employment discrimination or wage statutes (including, but not limited to, claims based on age, sex, sexual orientation, pregnancy, attainment of benefit plan rights, race, color, religion, national origin, ancestry, disability, medical condition, retaliation, marital status and veteran status); and/or

b. claims, actions, causes of action or liabilities and/or any other federal, state, or local statute, law, ordinance or regulations; and/or

c. any other claim whatsoever including, but not limited to, claims based upon breach of contract, breach of oral or implied contract, breach of covenant of good faith and fair dealing, wrongful termination, violation of public policy, defamation, intentional infliction of emotional distress, negligence and/or any other common law, statutory or other claim whatsoever arising out of or relating to Employee's employment by the City;

d. The City shall release any claim against Employee for which Employee would be entitled to a defense or indemnification from the City pursuant to City Code Section 3.26. Notwithstanding any contrary provision of this Agreement, the City shall not release any claim against Employee which the City would not be obligated to indemnify and defend Employee for/against pursuant to said Section (i.e. claims arising out of bad faith or claims with malicious or felonious intent), nor shall the City release any claims that resulted in a pecuniary gain to Employee;

e. The City's obligation to defend, hold harmless and indemnify Employee against certain claims or legal actions as set forth in the Amended Employment Agreement shall survive this Agreement and shall be deemed continued as part of this Agreement.

Excluded from this release of claims are any claims which cannot be waived by law, including any claims which Employee may make under state workers' compensation laws and/or any claim related to a breach of this Employment Separation Agreement. Also excluded from this release of claims is Employee's right to file a charge with an administrative agency. However, Employee waives any right to any monetary recovery should any federal, state, or local administrative agency pursue any claim on her behalf arising out of or related to her employment with the City. Also excluded from this waiver and release of claims are any acts of intentional malfeasance by Employee which have not been disclosed to the City and its elected officials.

10. In compliance with the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), Employee acknowledges that she has knowingly and voluntarily signed and entered into this Agreement, and that:

- a. This Agreement is written in a manner calculated to be understood by her, and she understands all of the terms of this Agreement;
- b. In addition to the waiver and release of all other claims, this Agreement results in the waiver of and release by her of all claims arising under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621, *et seq.* ("ADEA");
- c. In exchange for the waiver and release by her of all ADEA claims, Employee is receiving consideration in addition to anything of value to which she is already entitled;
- d. The City is hereby advising Employee to consult with an attorney before signing this Agreement and Employee has so consulted with an attorney of her choosing;
- e. This Agreement waives and releases only those claims and rights arising prior to the date Employee signs this Agreement;
- f. She understands that she has a period of twenty-one (21) days in which to consider this Agreement. After Employee signs this Agreement, she will have seven (7) calendar days to revoke it if she changes her mind by delivering a written revocation to Dean Frieders, City Attorney, 200 South Fourth Street, DeKalb, Illinois 60115.

11. The City agrees and acknowledges that if it receives any inquiry from any party regarding Employee's employment by the City, the City shall limit its response to such inquiry to Employee's dates of employment by the City, position held, and her last salary. Employee agrees to address all employment inquiries to the Human Resources Department. The City shall also provide any information which is legally required to be disclosed pursuant to a lawful request for information including but not limited to a Freedom of Information Act request, subpoena, or court order, provided, however, the City shall not release any private information of or pertaining to Employee, which the City is permitted to withhold pursuant to applicable law.

12. If any of the provisions are not fully complied with by either party, both parties acknowledge and agree that the other party may seek enforcement of this Agreement by a court in the Twenty-Third Judicial Circuit, DeKalb County, Illinois. The City and Employee expressly agree that the aforesaid court shall be the sole and exclusive venue in which to pursue purported violations of this Agreement. In the event that Employee breaches any provision of this Agreement, the City shall not be obligated to pay any further compensation or benefits to Employee. This Agreement shall be governed and enforced pursuant to Illinois law. Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal or

invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not be a part of this Agreement.

13. The parties further agree and acknowledge by signing this agreement that this document constitutes the full and complete understanding between them and that no other understanding, verbal or written, exists between the parties. This agreement may not be modified except in writing, signed by both parties hereto.

14. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

15. Other than approval of this document in Open Session of the City Council as required by Illinois State Law, Employee and the City agree that neither shall make any written or oral statements to the public or the press except in the form of the joint press release attached to this Agreement as Appendix "B" and may also confirm Employee's dates of employment and separation and provide only that information which is subject to the Freedom of Information Act and which does not violate this Agreement. The City and Employee mutually and reciprocally agree that neither party will publicly make or circulate any disparaging remarks or comments, whether orally or in writing, about the other.

ANNE MARIE GAURA:

BY: Anne Marie Gaura

DATED: March 23, 2018

CITY OF DEKALB:
BY: [Signature]

ITS: MAYOR

DATED: 3-28-17



Appendix A

March 27, 2018

Mayor Jerry Smith
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115

Dear Mayor Smith:

Pursuant to the reasons we have discussed, I have elected to submit my voluntary resignation as City Manager, effective at the close of business on March 27, 2018. I am extremely appreciative of the opportunity to have served the City of DeKalb these past four years.

It has been my utmost honor and privilege to serve the community I first fell in love with from the time when I attended Northern Illinois University. I am particularly proud of the accomplishments that the elected and appointed officials have achieved collectively during my tenure here. Those accomplishments include all of the downtown redevelopment projects, such as Cornerstone, SunDog IT and Plaza DeKalb that are helping to re-invigorate the core of the community. In addition, industrial development has been a focus and the construction of the 987,000 square foot 3M distribution facility will help serve the long-term business interests of DeKalb.

The continued development of the City's collaborative working partnership with Northern Illinois University is an accomplishment that I am most proud of because of its positive impact on both organizations, and DeKalb as a whole. Lastly, I also want to acknowledge and thank the incredible dedication and service of City employees throughout all levels of the organization. They are the lifeblood of the service provided to this wonderful community.

I extend my best wishes for a successful future to the City, the citizens and businesses of DeKalb and lastly to the City's dedicated workforce. Thank you again for the wonderful opportunity to have served this great community.

Sincerely,



Anne Marie Gaura

Appendix B

PRESS RELEASE
For Immediate Release
March 23, 2018

City Manager Resigns

On March 23, 2018, Anne Marie Gaura provided her notice that, as of March 27, 2018, she will resign her position as City Manager of the City of DeKalb after more than four years of service to the community. Ms. Gaura has decided to move on and pursue other career opportunities. Anne Marie Gaura has served as City Manager since January 2014.

Mayor Jerry Smith stated, "Anne Marie Gaura served the City of DeKalb as its City Manager for over four years, and dedicated significant time and effort to her duties. Her service is greatly appreciated. The City wishes her success in her future endeavors."

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