

**RESOLUTION 2019-011**

**PASSED: JANUARY 14, 2019**

**AUTHORIZING A SEPARATION AGREEMENT WITH  
MOLLY TALKINGTON.**

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

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


**Section 1:** The City Council of the City of DeKalb hereby authorizes the Mayor to execute a Separation Agreement with Molly Talkington, in the format attached hereto as Exhibit A, subject to such revisions as shall be acceptable to her with the recommendation of City staff.


**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 14<sup>th</sup> day of January 2019 and approved by me as Mayor on the same day. Passed by a 6-0-1-1 roll call vote. Aye: Finucane, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None. Absent: Jacobson. Abstain: Stupegia.

**ATTEST:**

  
LYNN A. FAZEKAS, City Clerk

  
JERRY SMITH, Mayor

The seal of the City of DeKalb, Illinois, is circular with a double-line border. The outer ring contains the text "CITY OF DE KALB" at the top and "STATE OF ILLINOIS" at the bottom. The inner circle features a central emblem depicting a plow, a sheaf of wheat, and a bundle of cotton, symbolizing agriculture. Below the emblem is a banner with the word "DEKALB".

## Settlement Agreement

**WHEREAS**, the City of DeKalb (“City”) is a home rule jurisdiction located in DeKalb, Illinois; and

**WHEREAS**, Molly Talkington (“Talkington”) is employed by the City as an at-will employee as the City’s Finance Director; and

**WHEREAS**, Talkington also served for a period of time as the Interim City Manager; and

**WHEREAS**, the parties mutually desire to set forth the terms of Talkington’s separation from employment with the City.

**NOW, THEREFORE**, the parties agree as follows:

1. **Recitals.** The foregoing recitals are incorporated as if fully set forth in this Agreement.
2. **Parties.** This Settlement Agreement is entered between Talkington on behalf of herself and each of her personal and legal representatives, dependents, heirs, devisees, executors, successors and assigns, and the City on behalf of itself and its successors, assigns, benefit plans, and plan administrators, past and present elected officials, appointed officials, trustees, employees, agents, independent contractors, attorneys, and insurers.
3. **Resignation.** Simultaneous with her execution of this Agreement, Talkington 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 January 7, 2019. The City will report to IMRF that her last date of employment is January 7, 2019. Talkington agrees not to seek reemployment with the City at any time.
4. **Consideration.** Provided that Talkington signs and does not revoke this Agreement, Talkington shall receive the following severance payments as consideration:
  - a. The City will continue to pay Talkington her normal bi-weekly salary, including car allowance, at the rate of pay she earned as the Finance Director as of January 6, 2019. Her gross, bi-weekly payment will be \$4,995.55 every two weeks. These payroll payments will continue for six months, from January 7, 2019, until July 7, 2019. The payments will be issued less all taxes, withholdings, employee pension contributions, health insurance premiums, and any other legally required payroll deductions and withholdings. The City shall issue an IRS Form W-2 for these payments.
  - b. Talkington will be allowed to remain on the City’s group health and dental insurance plan until July 7, 2019, at her current PPO-Family Health and PDP#1 Family Dental selections, by paying the same “employee” portion of her health insurance benefits as all other non-bargaining unit employees. Her portion of insurance premiums is \$207.72 bi-weekly for health insurance and \$9.41 bi-

weekly for dental insurance. Her portion of employee premiums shall be deducted from her gross salary.

- c. Payment for 118.158 hours of accrued, unused vacation leave, at a total gross value of \$7,161.91. This payment will be issued on her next regularly scheduled paycheck after she accepts this Agreement. Talkington will not accrue any additional benefit time while receiving the continuing wages and insurance benefits described in paragraphs a and b above. Talkington will not be compensated for any other form of accrual, paid time off or benefit time, and acknowledges that she is not entitled to any such compensation.
- d. The City will issue a letter of reference, which is attached as Appendix B.

5. **No Further Compensation.** Other than the payment of wages accrued prior to January 7, 2019, and the payments contemplated by the preceding section of this Agreement, Talkington shall not be entitled to any further or additional compensation of any kind, whatsoever, from the City. Talkington's status as an employee of the City of DeKalb shall terminate as of the close of business on January 7, 2019.

6. **COBRA Benefits.** After July 7, 2019, Talkington shall be eligible to receive COBRA insurance continuation benefits, at her own election. If Talkington elects to receive COBRA benefits, she shall be solely responsible for paying all insurance premiums at the normal rate for other non-retired, former City employees.

7. **Return of Property.** Talkington 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. Talkington 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. She 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. Talkington will make arrangements with Assistant City Manager Raymond Munch to retrieve her personal belongings at a time that does not interfere with the City's business.

8. **Unemployment Benefits.** The City agrees that it will not contest Talkington's application for unemployment benefits with the State of Illinois Department of Employment Security.

9. **Adequacy of Consideration.** Talkington acknowledges that the benefits, as described in Paragraphs 3, 5, and 7 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 Talkington with such consideration.

10. **Waiver of Claims.** In consideration of the promises made by the City in this Settlement Agreement, Talkington (on behalf of herself and each of her personal and legal representatives, dependents, heirs, devisees, executors, successors and assigns) hereby releases and forever discharges the City (including the City and its successors, assigns, benefit plans, and

plan administrators, past and present elected officials, appointed officials, trustees, employees, agents, independent contractors, attorneys, and insurers) from any and all actions, causes of action, claims or liabilities of any kind which have or could be asserted against the City arising out of or related to Talkington's employment by the City, including but not limited to:

α. 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 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 Talkington's employment by the City and separation from employment.

Excluded from this release of claims are any claims which cannot be waived by law, including any claims which Talkington 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 Talkington's right to file a charge with an administrative agency. However, Talkington 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 his employment with the City. Also excluded from this waiver and release of claims are any acts of intentional malfeasance by Talkington which have not been disclosed to the City and its elected officials. Talkington warrants that she is not suffering from any workplace injuries that were not previously reported to the City in writing.

11. **EEOC and IDHR Charges.** Within seven (7) days of signing this Agreement, Talkington shall provide written notice to the EEOC and the IDHR that she desires to

voluntarily withdraw her charge of discrimination, which has been docketed as EEOC Charge No. 440 2019 01051 and IDHR Charge No. 191226021, and that she does not wish to pursue those charges any further. Talkington shall provide a copy of those written notices to the City.

12. **Older Worker Benefit Protection Act.** In compliance with the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), Talkington 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, Talkington is receiving consideration in addition to anything of value to which she is already entitled;
- d. The City advised Talkington to consult with an attorney before signing this Agreement, and she has in fact consulted with an attorney of her own choice;
- e. This Agreement waives and releases only those claims and rights arising prior to the date Talkington signs this Agreement;
- f. She understands that she has a period of twenty-one (21) days in which to consider this Agreement. After Talkington signs this Agreement, she will have seven (7) calendar days to revoke it if she changes her mind by delivering a written revocation to Bill Nicklas, City Manager, 200 South Fourth Street, DeKalb, Illinois 60115.

13. **Employment Inquiries.** Talkington agrees to address all employment inquiries to the Human Resources Department. The City agrees and acknowledges that if the Human Resources Department receives any inquiry from any party regarding Talkington’s employment by the City, the City shall limit its response to such inquiry to Talkington’s dates of employment by the City, position held, and her last salary, and will also provide a copy of the reference letter attached as Appendix B. 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. The City may release additional information if Talkington provides a written release authorizing the release of such information.

14. **Enforcement.** 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 Talkington expressly agree that the aforesaid court shall be the sole and exclusive venue in which to pursue purported violations of this Employment Separation Agreement. In the event that Talkington breaches any provision of this Agreement, the City shall not be obligated to pay any further compensation or benefits to Talkington; shall be entitled to recover any payments

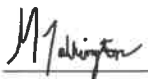
previously made; and shall be entitled to assert this Agreement as a complete defense to any claims asserted. This Agreement shall be governed and enforced pursuant to Illinois law. Should any provision of this Employment Separation Agreement be declared or be determined by any court of competent jurisdiction 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 Employment Separation Agreement.

15. **Entire Agreement.** 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.

16. **Prior Agreements.** This Agreement replaces and supersedes any and all prior agreements between the parties. In the event of a conflict between any prior agreement and the terms of this Settlement Agreement, the terms of this Settlement Agreement shall control.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same agreement.

MOLLY TALKINGTON:

BY: 

DATED: 1/14/2019

CITY OF DEKALB:

BY: 

ITS: MAYOR

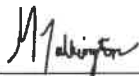
DATED: 1/14/2019

## Appendix A

Dear Mr. Nicklas,

For the reasons we have discussed, I have elected to submit my voluntary resignation, effective at the close of business on January 7, 2019. I also voluntarily resign from my appointed position on the Board of Trustees of the DeKalb Police Pension Fund. I am happy to have had the chance to serve the citizens of DeKalb, and I am proud of the accomplishments we made during my time here. I extend my best wishes for a successful future to you, the citizens of DeKalb, and the City's fine workforce.

Sincerely,



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Molly Talkington

## Appendix B

To whom it may concern:

This letter relates to former City of DeKalb employee Molly Talkington. Molly worked for the City as its Finance Director and its Interim City Manager. After only 10 months serving as our Finance Director, Molly was chosen to be our Interim City Manager because of the commitment to the job she displayed while the City conducted a permanent City Manager search. Molly did not apply for that position. During her tenure with the City, Molly displayed a strong work ethic.

The City eventually hired a full-time City Manager. When that decision was made, Molly and the City mutually agreed it would be best if I, as the new City Manager, would implement my vision for the City of DeKalb, going forward, including the ability to build my own Executive Management team which includes the Finance Director position. This decision should not be viewed as a reflection on Molly's talents, but instead should be viewed as part of the normal and routine turnover in key positions when there are changes at the top of an organization.

I am aware that if you "Google" Molly's name, you might find references to an investigation and threats of litigation. I can tell you that after completing our investigation, the City came to the conclusion that Molly's conduct was based on Molly's professional judgment and information she received from the Illinois Intergovernmental Personnel Benefit Cooperative, (IPBC), an intergovernmental insurance cooperative which provides insurance benefits to the City.

I firmly believe that Molly has learned a lot from her experiences with the City of DeKalb, and that she can be a good fit for another organization.

Sincerely,



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Bill Nicklas  
City Manager