



City of Muscatine



MUSCATINE CITY COUNCIL

Agenda Item Summary – Regular Meeting

Date March 3, 2022

STAFF

Carol Webb, City Administrator
[Jerry Ewers](#), Fire Chief

SUBJECT

Resolution Approving Release and Settlement Agreements with Certain Fire Department Personnel

EXECUTIVE SUMMARY

Presented for City Councils consideration is a resolution approving release and settlement agreements with certain Fire Department personnel. These settlement agreements resolve a dispute between the City and said personnel and require actions by both parties.

STAFF RECOMMENDATION

City staff recommends approval

BACKGROUND/DISCUSSION

In September 2021, certain employees of the City's Fire Department filed a lawsuit against the City of Muscatine alleging the City violated the Iowa Wage Payment Collection Act and Fair Labor Standard Act as well as wage theft. While the City denies all allegations in the lawsuit, the Parties agreed to resolve all disputes between them under the conditions outlined in the attached Settlement and Release Agreements.

CITY FINANCIAL IMPACT

Under the proposed agreements, the City will pay the Parties a total of \$31,778.54 and will be funded from the Fire Department operating budget.

ATTACHMENTS

[Agreements](#)

RESOLUTION 2022- 0093

A Resolution Approving Settlement Agreements Between the City Of Muscatine and June Anne Gaeta, Joseph Timmsen, Darrell Janssen, Andy Summitt, Theodore Hillard, and Gary Ronzheimer (the “Parties”).

WHEREAS, on or about September 7, 2021, the City of Muscatine was served with a Petition by Gaeta, Timmsen, Janssen, Summitt, and Hillard alleging violations of the Iowa Wage Payment Collection Act and Fair Labor Standard Act, as well as wage theft;

WHEREAS, the City filed an answer denying all claims;

WHEREAS, the Parties have reached tentative settlement agreements to resolve the outstanding issues;

WHEREAS, the settlement agreements require, among other things, that the Parties dismiss all claims against the City with prejudice, the City pay the Parties a total of \$31,778.54 to avoid the costs, expenses and uncertainty of a trial;

WHEREAS, City staff recommends approval of the settlement agreements; and

NOW THEREFORE, BE IT RESOLVED, that the City Council hereby authorizes approval of the settlement agreements with Gaeta, Timmsen, Janssen, Summitt, Hillard, and Ronzheimer.

PASSED, APPROVED, AND ADOPTED ON March 03, 2022.

(CITY SEAL)

Brad Bark
Brad Bark (Mar 8, 2022 10:24 CST)

Brad Bark, Mayor

ATTEST:

Carol Webb
Carol Webb (Mar 8, 2022 11:23 CST)

Carol Webb, City Clerk



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the City of Muscatine (“City”) and Gary Ronzheimer (“Employee”) (collectively referred to herein as “Parties”)

On or about September 7, 2021, several employees similarly situated to Employee filed a Petition at Law in the Iowa District Court for Muscatine County against the City (“Lawsuit”). The Lawsuit alleged violations of the Iowa Wage Payment Collection Act and Fair Labor Standard Act, as well as wage theft. City denies the allegations in the Lawsuit. The Parties intend to resolve fully and completely all disputes, claims, issues, and differences between them including, but not limited to, all claims alleged in the Lawsuit and all other claims, demands, or causes of action which arose prior to the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and performances set forth herein, the sufficiency of which the Parties expressly acknowledge, the Parties hereby agree as follows:

1. **Non-Admission of Liability.** This Agreement shall not be construed as an admission by City or any of its elected officials or employees of any wrongdoing or any violation of any federal, state, or local statute or ordinance or any enforceable right of Employee. City specifically disclaims any wrongdoing whatsoever against Employee on the part of itself and its current or former officials, employees, or agents.

2. **Payment.** On or after the date this Agreement is executed by the Parties, City will pay the total sum of \$3168.27 (“Settlement Amount”) to Employee.

3. **Release of All Claims.** In consideration of the promises and performances set forth herein, Employee—on behalf of Employee, successors and assigns—hereby releases and forever discharges City and its current and former officers, employees, elected officials and agents (“City Parties”) from all demands, claims, causes of action, obligations, agreements, promises, representations, damages, suits and liabilities whatsoever, of any kind or nature in law or in equity, that exists as of the date this Agreement is executed, whether developed or undeveloped, known or unknown, foreseen or unforeseen. Employee acknowledges that Employee consciously intends these consequences even as to claims for damages that may exist as of the date of this Agreement, but which Employee does not now exist, and which, if known, would materially affect Employee’s decision to execute this Agreement, regardless of whether Employee lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. The claims Employee is releasing include (without limiting the generality of the foregoing) all claims, demands, or actions which were or could have been asserted by Employee; all claims arising under the Fair Labor Standards Act (“FLSA”), the Iowa Wage Payment Collection Act and any other claims arising under the common law of the State of Iowa, the federal government, or local governments—except for any claims which cannot be legally released.

4. **Interpretation of Agreement.** The Parties have reviewed this Agreement, and accordingly, this Agreement shall not be construed for or against any party by reason of source of drafting. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part of this agreement and release shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

5. **Warranty of Authority to Execute Agreement.** The signatories to this Agreement represent and warrant that each has the right and authority to execute this Agreement in their individual and/or representative capacity, as applicable. In entering into this Agreement, no Party has relied on any representations or warranties of any other Party, other than the representations or warranties expressly set forth within this Agreement. The Parties intend this Agreement to be legally binding. The Parties are legally able to give and entitled to receive the

consideration being provided in settlement of Employee's Claims. The Parties affirm they have not been involved in any bankruptcy or other insolvency proceedings at any time since the aforementioned Lawsuit was filed.

6. **Third Party Interests.** Employee represents that Employee knows of no person or entity who/that has paid any amount on Employee's behalf for which any other person or entity may seek, claim or attempt to recover as a subrogate of Employee against City. If such lienholder, subrogate, or any person/entity with a third-party interest exists, Employee agrees to satisfy those third-party interests out of the settlement proceeds which Employee receives and further agrees to indemnify City for any such claims or interests that are asserted thereby. Employee further represents that Employee has not assigned any of the Claims to any other person or entity.

7. **Entire Agreement.** This Agreement constitutes the entire agreement, written and oral, of the parties hereto, and it supersedes and replaces all prior negotiations, proposed agreements, understandings, representations, and agreements, written or oral.

8. **Amendment, Modification, Waiver.** This Agreement may not be amended, modified, or changed unless the changes are in writing and signed by all Parties hereto. The waiver by any party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof, nor shall any failure to enforce any provision hereof operate as a waiver at such time or at any future time of such provision or of any other provision hereof.

9. **Additional Representations.** The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to affect delivery of the Settlement Amount and the dismissal of all claims with prejudice, each Party paying their own costs, including, but not limited to execution of necessary documents to dismiss the Claims and Complaint with prejudice and timely deliver payment of the Settlement Amount noted above.


10. **Fees and Costs.** Each party hereto will bear its respective costs and fees, including attorneys' fees.

11. **Choice of Law; Consent to Jurisdiction and Laws.** This Agreement will be governed by and construed under the laws of the state of Iowa. The Parties understand that they consent to the personal jurisdiction of the state and federal courts in Iowa with respect to any action seeking to enforce the terms of this Agreement. City agrees that it will abide by the Open Records Act, Iowa Code Chapter 22.


12. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. Copies or facsimiles of signatures shall be the equivalent of original signatures.

13. **Council Approval.** Employee acknowledges this Release is subject to the approval of the City Council. City agrees to present this Release to the City Council at the next meeting following the execution of this Release.

Read carefully. This document includes a release of substantial claims and rights. By signing this document, you acknowledge that you have read the foregoing document, that you understand its terms, and that you are freely and voluntarily signing the same after being advised to consult an attorney.



Gary Ronzheimer
Date: **21 Dec 2021**


Carol Webb (Mar 8, 2022 11:23 CST)

On Behalf of the City of Muscatine, Iowa
Date: Mar 8, 2022

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the City of Muscatine, Iowa (“City”), as well as June Anne Gaeta and Joseph Timmsen (collectively “Plaintiffs”)

Recitals

A. On or about September 7, 2021, Plaintiffs filed a Petition at Law against the City alleging wage claims under Iowa and federal law in the District Court of Muscatine County, Iowa, captioned *June Anne Gaeta and Joseph Timmsen v. City of Muscatine, LACV026220*. The lawsuit was subsequently removed to the United States District Court for the Southern District of Iowa, Eastern District, case captioned *3:21-cv-0089-JAJ-HCA* (collectively, the “Lawsuit”).

B. The City denied, and continues to deny, the allegations on which Plaintiffs based their claims.

C. The parties to this Agreement (collectively “Parties”) now intend to resolve fully and completely all disputes, claims, issues, and differences between them including, but not limited to, all claims alleged in the Lawsuit, as well as all other claims, demands, or causes of action which arose prior to the date of this Agreement

Agreement

NOW THEREFORE, in consideration of the mutual promises and performances set forth herein, the sufficiency of which the Parties expressly acknowledge, the Parties hereby agree as follows:

1. **Non-Admission of Liability.** This Agreement shall not be construed as an admission by the City or any of its current or former elected officials, employees or agents of any wrongdoing or any violation of any federal, state, or local statute or ordinance or any enforceable right of Plaintiffs. The City specifically disclaims any wrongdoing whatsoever against Plaintiffs on the part of itself and its current or former officials, employees or agents.

2. **Payment.** Within seven (7) days of the execution of this Agreement, the City will pay the total sum of \$25,000.00 (Twenty-Five Thousand and 00/100) (“Settlement Amount”) in three checks as described below:

A. A direct deposit payroll check payable to June Anne Gaeta in the gross amount of \$5,000.00 Dollars (Five Thousand Dollars and 00/100). This entire payment will be designated as wages and the City will withhold all standard taxes related to wages therefrom including state income tax, federal income tax, and FICA. The City shall issue a W-2 to June Anne Gaeta for this payment. The Parties agree that this is an appropriate amount to compensate June Anne Gaeta for lost wages under the specific facts and circumstances of her claim for lost wage damages.

B. A direct deposit payroll check payable to Joseph Timmsen in the gross amount of \$5,000.00 Dollars (Five Thousand Dollars and 00/100). This entire payment will be designated as wages and the City will withhold all standard taxes related to wages

therefrom including state income tax, federal income tax, and FICA. The City shall issue a W-2 to Joseph Timmsen for this payment. The Parties agree that this is an appropriate amount to compensate Joseph Timmsen for lost wages under the specific facts and circumstances of his claim for lost wage damages.

C. A check payable to the Fiedler Law Firm (EIN XX-XXXXXXX) in the amount of \$15,000.00 (Fifteen thousand Dollars and 00/100).

Plaintiffs agrees to pay all taxes owed by them relating to the Settlement Amount they receive pursuant to this Agreement.

3. **Dismissal of Lawsuit.** Plaintiffs agree to dismiss the Lawsuit with prejudice, with all parties to bear their own costs and attorneys' fees within two days of receipt of the settlement amount set forth in Section 2. Plaintiffs represent that they have not filed any other lawsuits, charges or complaints against the City, other than the Lawsuit. The settlement terms set forth herein are contingent upon the dismissal of the Lawsuit on the above terms.

4. **Release of All Claims.** In consideration of the promises and performances set forth herein, Plaintiffs on behalf of themselves, their successors and assigns hereby releases and forever discharges the City and its current and former officers, employees, elected officials and agents from any and all demands, claims, causes of action, obligations, agreements, promises, representations, damages, suits and liabilities whatsoever, of any kind or nature in law or in equity, that exists as of the date this Agreement is executed, whether developed or undeveloped, known or unknown, foreseen or unforeseen. Plaintiffs acknowledge that they each consciously intend these consequences even as to claims for damages that may exist as of the date of this Agreement, but which Plaintiffs do not know exist, and which, if known, would materially affect Plaintiffs' decision to execute this Agreement, regardless of whether Plaintiffs' lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The claims Plaintiffs are releasing include (without limiting the generality of the foregoing) all claims, demands, or actions which were or could have been asserted by Plaintiffs; all claims arising under the Fair Labor Standards Act, the Iowa Wage Payment Collection Act, any other federal, state, or local statute or regulation; and any claims arising under the common law of the State of Iowa or any other state, except for claims which cannot be legally released, including claims for compensatory damages; punitive damages; mental anguish and emotional distress; pain and suffering; loss or reduction of earnings or earning capacity; lost earnings; attorneys' fees, costs and interest.

In consideration of the promises and performances set forth herein, the City hereby releases Plaintiffs and forever discharges them from any and all demands, claims, causes of action, obligations, agreements, promises, representations, damages, suits and liabilities whatsoever, of any kind or nature in law or in equity, that exists as of the date this Agreement is executed, whether developed or undeveloped, known or unknown, foreseen or unforeseen.

5. **Interpretation of Agreement.** The Parties and their attorneys have reviewed this Agreement, and accordingly, this Agreement shall not be construed for or against any party by reason of source of drafting. If any portion, provision, or part of this Agreement is held,

determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part of this agreement and release shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

6. **Warranty of Authority to Execute Agreement.** The signatories to this Agreement represent and warrant that each has the right and authority to execute this Agreement in their individual and/or representative capacity, as applicable. In entering into this Agreement, no Party has relied on any representations or warranties of any other Party, other than the representations or warranties expressly set forth within this Agreement. The Parties intend this Agreement to be legally binding. The Parties are legally able to give and entitled to receive the consideration being provided in settlement of Plaintiffs' Claims. The Parties have not been involved in any bankruptcy or other insolvency proceedings at any time since the aforementioned lawsuit was filed.

7. **Third Party Interests.** Plaintiffs represent that they know of no person or entity who/that has paid any amount on their behalf for which any other person or entity may seek, claim or attempt to recover as a subrogee of Plaintiffs against the City. If such lienholder, subrogee, or any person/entity with a third-party interest exists, Plaintiffs agree to satisfy those third-party interests out of the settlement proceeds which Plaintiffs receive and further agree to indemnify the City for any such claims or interests that are asserted thereby. Plaintiffs further represent that they have not assigned any claims to any other person or entity.

8. **Entire Agreement.** This Agreement constitutes the entire agreement, written and oral, of the Parties hereto, and it supersedes and replaces all prior negotiations, proposed agreements, understandings, representations, and agreements, written or oral.

9. **Amendment, Modification, Waiver.** This Agreement may not be amended, modified, or changed unless the changes are in writing and signed by all the Parties. The waiver by any of the Parties of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof, nor shall any failure to enforce any provision hereof operate as a waiver at such time or at any future time of such provision or of any other provision hereof.

10. **Additional Representations.** The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to affect delivery of this Agreement and the dismissal of all claims with prejudice, each Party paying their own costs, including, but not limited to execution of necessary documents to dismiss the lawsuit with prejudice.

11. **Fees and Costs.** Each party hereto will bear its respective costs and fees, including attorneys' fees incurred in the litigation of this matter, except for the payments noted within Paragraph 2 above.

12. **Choice of Law; Consent to Jurisdiction.** This Agreement will be governed by and construed under the laws of the state of Iowa. The Parties understand that they consent to the personal jurisdiction of the state and federal courts in Iowa with respect to any action seeking to enforce the terms of this Agreement.

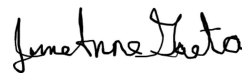
13. **Taxes.** Plaintiffs agree that they are responsible for the payment of all federal, state and local taxes, of any type whatsoever, due from Plaintiffs and resulting from the above payments to them, if any. Plaintiffs agree to indemnify the City for any monies (including tax, interest and penalties) paid by the City to the IRS or any state or local taxing authority as a result of the non-payment by Plaintiffs of any required taxes.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. Copies or facsimiles of signatures shall be the equivalent of original signatures.

15. **Council Approval.** Plaintiffs acknowledge this Agreement is subject to the approval of the City Council. The City agrees to present this document to the Council at the next meeting following Plaintiffs' execution of this Agreement.

Please read carefully. This document includes a release of substantial claims and rights you may have. By signing this document, you are acknowledging that you have read the foregoing document, that you understand its terms, and that you are freely and voluntarily signing the same after first bring advised to consult your own attorney.

Date: 2 / 08 / 2 22



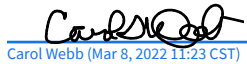
June Anne Gaeta

Date: 02 / 08 / 2022



Joseph Timmsen

Date: Mar 8, 2022


Carol Webb (Mar 8, 2022 11:23 CST)

On Behalf of the City of Muscatine, Iowa

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the City of Muscatine (“City”) and Darrell Janssen (“Employee”) (collectively referred to herein as “Parties”)

On or about September 7, 2021, Employee filed a Petition at Law in the Iowa District Court for Muscatine County against the City (“Lawsuit”). The Lawsuit alleged violations of the Iowa Wage Payment Collection Act and Fair Labor Standard Act, as well as wage theft. City denies the allegations in the Lawsuit. The Parties intend to resolve fully and completely all disputes, claims, issues, and differences between them including, but not limited to, all claims alleged in the Lawsuit and all other claims, demands, or causes of action which arose prior to the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and performances set forth herein, the sufficiency of which the Parties expressly acknowledge, the Parties hereby agree as follows:

1. **Non-Admission of Liability.** This Agreement shall not be construed as an admission by City or any of its elected officials or employees of any wrongdoing or any violation of any federal, state, or local statute or ordinance or any enforceable right of Employee. City specifically disclaims any wrongdoing whatsoever against Employee on the part of itself and its current or former officials, employees, or agents.

2. **Payment.** On or after the date this Agreement is executed by the Parties, City will pay the total sum of \$916.46 (“Settlement Amount”) to Employee.

3. **Release of All Claims.** In consideration of the promises and performances set forth herein, Employee—on behalf of Employee, successors and assigns—hereby releases and forever discharges City and its current and former officers, employees, elected officials and agents (“City Parties”) from all demands, claims, causes of action, obligations, agreements, promises, representations, damages, suits and liabilities whatsoever, of any kind or nature in law or in equity, that exists as of the date this Agreement is executed, whether developed or undeveloped, known or unknown, foreseen or unforeseen. Employee acknowledges that Employee consciously intends these consequences even as to claims for damages that may exist as of the date of this Agreement, but which Employee does not now exist, and which, if known, would materially affect Employee’s decision to execute this Agreement, regardless of whether Employee lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. The claims Employee is releasing include (without limiting the generality of the foregoing) all claims, demands, or actions which were or could have been asserted by Employee; all claims arising under the Fair Labor Standards Act (“FLSA”), the Iowa Wage Payment Collection Act and any other claims arising under the common law of the State of Iowa, the federal government, or local governments—except for any claims which cannot be legally released.

4. **Interpretation of Agreement.** The Parties have reviewed this Agreement, and accordingly, this Agreement shall not be construed for or against any party by reason of source of drafting. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part of this agreement and release shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

5. **Warranty of Authority to Execute Agreement.** The signatories to this Agreement represent and warrant that each has the right and authority to execute this Agreement in their individual and/or representative capacity, as applicable. In entering into this Agreement, no Party has relied on any representations or warranties of any other Party, other than the representations or warranties expressly set forth within this Agreement. The Parties intend this Agreement to be legally binding. The Parties are legally able to give and entitled to receive the

consideration being provided in settlement of Employee's Claims. The Parties affirm they have not been involved in any bankruptcy or other insolvency proceedings at any time since the aforementioned Lawsuit was filed.

6. **Third Party Interests.** Employee represents that Employee knows of no person or entity who/that has paid any amount on Employee's behalf for which any other person or entity may seek, claim or attempt to recover as a subrogate of Employee against City. If such lienholder, subrogate, or any person/entity with a third-party interest exists, Employee agrees to satisfy those third-party interests out of the settlement proceeds which Employee receives and further agrees to indemnify City for any such claims or interests that are asserted thereby. Employee further represents that Employee has not assigned any of the Claims to any other person or entity.

7. **Entire Agreement.** This Agreement constitutes the entire agreement, written and oral, of the parties hereto, and it supersedes and replaces all prior negotiations, proposed agreements, understandings, representations, and agreements, written or oral.

8. **Amendment, Modification, Waiver.** This Agreement may not be amended, modified, or changed unless the changes are in writing and signed by all Parties hereto. The waiver by any party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof, nor shall any failure to enforce any provision hereof operate as a waiver at such time or at any future time of such provision or of any other provision hereof.

9. **Additional Representations.** The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to affect delivery of the Settlement Amount and the dismissal of all claims with prejudice, each Party paying their own costs, including, but not limited to execution of necessary documents to dismiss the Claims and Complaint with prejudice and timely deliver payment of the Settlement Amount noted above.

10. **Fees and Costs.** Each party hereto will bear its respective costs and fees, including attorneys' fees.

11. **Choice of Law; Consent to Jurisdiction and Laws.** This Agreement will be governed by and construed under the laws of the state of Iowa. The Parties understand that they consent to the personal jurisdiction of the state and federal courts in Iowa with respect to any action seeking to enforce the terms of this Agreement. City agrees that it will abide by the Open Records Act, Iowa Code Chapter 22.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. Copies or facsimiles of signatures shall be the equivalent of original signatures.

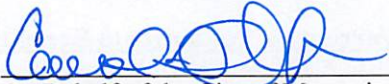
13. **Council Approval.** Employee acknowledges this Release is subject to the approval of the City Council. City agrees to present this Release to the City Council at the next meeting following the execution of this Release.

Read carefully. This document includes a release of substantial claims and rights. By signing this document, you acknowledge that you have read the foregoing document, that you understand its terms, and that you are freely and voluntarily signing the same after being advised to consult an attorney.



Darrell Janssen

Date: 1-21-22



On Behalf of the City of Muscatine, Iowa

Date: 1-21-22

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the City of Muscatine (“City”) and Andy Summitt (“Employee”) (collectively referred to herein as “Parties”)

On or about September 7, 2021, Employee filed a Petition at Law in the Iowa District Court for Muscatine County against the City (“Lawsuit”). The Lawsuit alleged violations of the Iowa Wage Payment Collection Act and Fair Labor Standard Act, as well as wage theft. City denies the allegations in the Lawsuit. The Parties intend to resolve fully and completely all disputes, claims, issues, and differences between them including, but not limited to, all claims alleged in the Lawsuit and all other claims, demands, or causes of action which arose prior to the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and performances set forth herein, the sufficiency of which the Parties expressly acknowledge, the Parties hereby agree as follows:

1. **Non-Admission of Liability.** This Agreement shall not be construed as an admission by City or any of its elected officials or employees of any wrongdoing or any violation of any federal, state, or local statute or ordinance or any enforceable right of Employee. City specifically disclaims any wrongdoing whatsoever against Employee on the part of itself and its current or former officials, employees, or agents.

2. **Payment.** On or after the date this Agreement is executed by the Parties, City will pay the total sum of \$813.10 (“Settlement Amount”) to Employee.

3. **Release of All Claims.** In consideration of the promises and performances set forth herein, Employee—on behalf of Employee, successors and assigns—hereby releases and forever discharges City and its current and former officers, employees, elected officials and agents (“City Parties”) from all demands, claims, causes of action, obligations, agreements, promises, representations, damages, suits and liabilities whatsoever, of any kind or nature in law or in equity, that exists as of the date this Agreement is executed, whether developed or undeveloped, known or unknown, foreseen or unforeseen. Employee acknowledges that Employee consciously intends these consequences even as to claims for damages that may exist as of the date of this Agreement, but which Employee does not now exist, and which, if known, would materially affect Employee’s decision to execute this Agreement, regardless of whether Employee lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. The claims Employee is releasing include (without limiting the generality of the foregoing) all claims, demands, or actions which were or could have been asserted by Employee; all claims arising under the Fair Labor Standards Act (“FLSA”), the Iowa Wage Payment Collection Act and any other claims arising under the common law of the State of Iowa, the federal government, or local governments—except for any claims which cannot be legally released.

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Andy Summit

Date: 1/21/22



On Behalf of the City of Muscatine, Iowa

Date: 1/21/22

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the City of Muscatine (“City”) and Theodore Hillard (“Employee”) (collectively referred to herein as “Parties”)

On or about September 7, 2021, Employee filed a Petition at Law in the Iowa District Court for Muscatine County against the City (“Lawsuit”). The Lawsuit alleged violations of the Iowa Wage Payment Collection Act and Fair Labor Standard Act, as well as wage theft. City denies the allegations in the Lawsuit. The Parties intend to resolve fully and completely all disputes, claims, issues, and differences between them including, but not limited to, all claims alleged in the Lawsuit and all other claims, demands, or causes of action which arose prior to the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and performances set forth herein, the sufficiency of which the Parties expressly acknowledge, the Parties hereby agree as follows:

1. **Non-Admission of Liability.** This Agreement shall not be construed as an admission by City or any of its elected officials or employees of any wrongdoing or any violation of any federal, state, or local statute or ordinance or any enforceable right of Employee. City specifically disclaims any wrongdoing whatsoever against Employee on the part of itself and its current or former officials, employees, or agents.

2. **Payment.** On or after the date this Agreement is executed by the Parties, City will pay the total sum of \$ 1880.71 (“Settlement Amount”) to Employee.

3. **Release of All Claims.** In consideration of the promises and performances set forth herein, Employee—on behalf of Employee, successors and assigns—hereby releases and forever discharges City and its current and former officers, employees, elected officials and agents (“City Parties”) from all demands, claims, causes of action, obligations, agreements, promises, representations, damages, suits and liabilities whatsoever, of any kind or nature in law or in equity, that exists as of the date this Agreement is executed, whether developed or undeveloped, known or unknown, foreseen or unforeseen. Employee acknowledges that Employee consciously intends these consequences even as to claims for damages that may exist as of the date of this Agreement, but which Employee does not now exist, and which, if known, would materially affect Employee’s decision to execute this Agreement, regardless of whether Employee lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. The claims Employee is releasing include (without limiting the generality of the foregoing) all claims, demands, or actions which were or could have been asserted by Employee; all claims arising under the Fair Labor Standards Act (“FLSA”), the Iowa Wage Payment Collection Act and any other claims arising under the common law of the State of Iowa, the federal government, or local governments—except for any claims which cannot be legally released.

4. **Interpretation of Agreement.** The Parties have reviewed this Agreement, and accordingly, this Agreement shall not be construed for or against any party by reason of source of drafting. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part of this agreement and release shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts.

5. **Warranty of Authority to Execute Agreement.** The signatories to this Agreement represent and warrant that each has the right and authority to execute this Agreement in their individual and/or representative capacity, as applicable. In entering into this Agreement, no Party has relied on any representations or warranties of any other Party, other than the representations or warranties expressly set forth within this Agreement. The Parties intend this Agreement to be legally binding. The Parties are legally able to give and entitled to receive the

consideration being provided in settlement of Employee's Claims. The Parties affirm they have not been involved in any bankruptcy or other insolvency proceedings at any time since the aforementioned Lawsuit was filed.

6. **Third Party Interests.** Employee represents that Employee knows of no person or entity who/that has paid any amount on Employee's behalf for which any other person or entity may seek, claim or attempt to recover as a subrogate of Employee against City. If such lienholder, subrogate, or any person/entity with a third-party interest exists, Employee agrees to satisfy those third-party interests out of the settlement proceeds which Employee receives and further agrees to indemnify City for any such claims or interests that are asserted thereby. Employee further represents that Employee has not assigned any of the Claims to any other person or entity.

7. **Entire Agreement.** This Agreement constitutes the entire agreement, written and oral, of the parties hereto, and it supersedes and replaces all prior negotiations, proposed agreements, understandings, representations, and agreements, written or oral.

8. **Amendment, Modification, Waiver.** This Agreement may not be amended, modified, or changed unless the changes are in writing and signed by all Parties hereto. The waiver by any party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof, nor shall any failure to enforce any provision hereof operate as a waiver at such time or at any future time of such provision or of any other provision hereof.

9. **Additional Representations.** The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to affect delivery of the Settlement Amount and the dismissal of all claims with prejudice, each Party paying their own costs, including, but not limited to execution of necessary documents to dismiss the Claims and Complaint with prejudice and timely deliver payment of the Settlement Amount noted above.

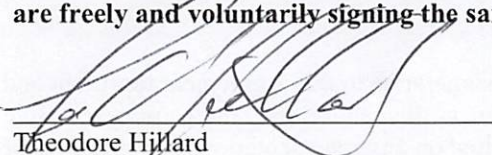
10. **Fees and Costs.** Each party hereto will bear its respective costs and fees, including attorneys' fees.

11. **Choice of Law; Consent to Jurisdiction and Laws.** This Agreement will be governed by and construed under the laws of the state of Iowa. The Parties understand that they consent to the personal jurisdiction of the state and federal courts in Iowa with respect to any action seeking to enforce the terms of this Agreement. City agrees that it will abide by the Open Records Act, Iowa Code Chapter 22.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. Copies or facsimiles of signatures shall be the equivalent of original signatures.

13. **Council Approval.** Employee acknowledges this Release is subject to the approval of the City Council. City agrees to present this Release to the City Council at the next meeting following the execution of this Release.

Read carefully. This document includes a release of substantial claims and rights. By signing this document, you acknowledge that you have read the foregoing document, that you understand its terms, and that you are freely and voluntarily signing the same after being advised to consult an attorney.


Theodore Hillard

Date: 1-21-22


On Behalf of the City of Muscatine, Iowa

Date: 1-21-22