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*Our Mission is to Provide Quality Public
Services in a Fiscally Responsible Manner
While Preserving the City's Open Space
Character*



NOTICE OF MEETING

**City Council Special Meeting
3800 Laverne Avenue North
Tuesday, January 31, 2017
2:00 p.m.**

- I. Call to Order

- II. Consideration of Finance Director's Employment Contract

- III. Adjourn



STAFF REPORT

DATE: January 31, 2017

MOTION

TO: Mayor and City Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: Finance Director Bendel's Employment Contract

BACKGROUND:

When Cathy Bendel was hired by the City on March 19, 2012, the Finance Director and City entered into an employment contract. A copy of the contract is attached.

ISSUE BEFORE COUNCIL:

Should the Council terminate the Finance Director's agreement?

PROPOSAL DETAILS/ANALYSIS:

Section 3 of the contract lays out the termination provisions, both for cause and without cause. I am recommending the City Council exercise the option to terminate without cause. In this event, the City Council will give the Finance Director 30 days written notice. Furthermore, since the Finance Director has been here more than 48 months she would be entitled to four months regular salary.

Resolution No. 2017-010 included in your packet approves termination of the contract without cause and would place the Finance Director on a 30-day paid leave until the effective date of the termination, unless she resigns earlier. Additionally, it offers the option to the Finance Director of a severance agreement, which includes six months salary if the agreement is executed by February 28, 2017.

FISCAL IMPACT:

Four months salary is \$27,872

Six months salary is \$41,808

In addition, the paid time off (PTO) balance will be 220 hours by March 2, 2017 (the end of the 30-day notice period) and valued at \$8,844.

OPTIONS:

- 1) Approve Resolution No. 2017-010
- 2) Amend and then Approve Resolution No. 2017-010
- 3) Do not terminate the Finance Director's employment agreement

RECOMMENDATION:

"Motion to approve Resolution No. 2017-010."

ATTACHMENTS:

- Finance Director Contract
- Resolution No. 2017-010

**FINANCE DIRECTOR CONTRACT
CITY OF LAKE ELMO
CATHY BENDEL SCHACHTNER**

1.0 PARTIES. The Agreement is date the 19th day of March, 2012 and is entered into by and between the City of Lake Elmo, a Minnesota statutory city ("City) and Cathy Bendel Schachtner ("Finance Director").

2.0 TERMS AND CONDITIONS. The City Hereby agrees to employ the Finance Director and the Finance Director agrees to accept employment according to the following terms and conditions:

- A. Compensation/Performance Evaluation.** Beginning salary will be \$70,000 per year. Performance evaluations will be conducted bi-annually or earlier if directed by the City Council. A salary adjustment to \$72,000 per year will be engaged if the Finance Director receives a satisfactory performance evaluation in September of 2012. Future salary adjustments shall be commensurate with any annual increase as awarded to City Employees (e.g. cost of living) at the discretion of the City Council. Other compensation increases, if any, will be awarded at the City Council discretion.
- B. Retirement/Deferred Compensation.** The City shall contribute to PERA as required by State law for Finance Director or an alternate pension plan, if selected by Finance Director, authorized by State law.
- C. Insurance.** Finance Director will be provided health, dental, life and disability insurance coverage in same manner and at the same level as made available for City employees.
- D. Holidays.** Finance Director will be entitled to the holidays specified in the governing policy manual adopted by the City of Lake Elmo.
- E. Personal Time Off (PTO).** Upon employment, Finance Director will receive a 40-hour bank of PTO. Thereafter, Finance Director will accrue PTO at the rate specified in the governing policy manual. Finance Director may carryover from year to year up to a maximum of that allowed by the governing policy manual adopted by the City (currently 240 hours of PTO). Finance Director shall accrue at the rate for five to ten years of service (currently 6.5 hours bi-weekly), and after two years of service shall accrue at the rate for 10 to 15 years of service (currently 8.0 hours bi-weekly), and thereafter shall accrue at the rate allowed by the governing policy manual adopted by the City. The PTO bank balance is paid out upon separation. The payment shall not be considered a severance benefit or severance compensation as such terms are used in paragraph 3.0 of this Agreement.
- F. Automobile/Expenses.** Finance Director shall be entitled to be reimbursed for mileage incurred in the performance of City business at the prevailing IRS rates.
- G. Dues/Conferences/Subscriptions.** The City will pay for due and related membership costs to the MNGFOA and the GFOA, provided routine attendance is to both regular meetings and annual continuing education conferences. Any out of state travel must be approved in advance by the City Council.

H. **Cell Phone.** Finance Director will be provided a City cell phone for business calls.

I. **Start Date:** March 19, 2012

3.0 TERMINATION OF AGREEMENT. Finance Director will serve at the will of the City Administrator and the City Council and may be terminated with or without cause at any time. Any of the following will constitute termination for cause and would result in no severance benefit:

1. Willful neglect of duty.
2. Gross inefficiency or incompetence in office that Finance Director has failed to correct after a reasonable written notice.
3. Malfeasance in Office, or actions which involve moral turpitude or would bring the City into disrepute, conviction for an illegal act involving personal gain to Employee.

Should the City terminate Finance Director's employment without cause, the City Council will give the Finance Director thirty (30) days written notice of termination. In the event of termination without cause, the Finance Director shall be entitled to the following compensation:

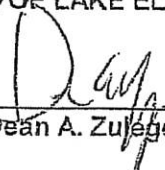
1. 0 – 36 months – two (2) months regular salary;
2. 36-48 months – three (3) months regular salary;
3. 48 months or more – four (4) months of regular salary.

If the Finance Director decides to terminate employment with the City of Lake Elmo, the Finance Director is required to give a minimum of thirty (30) days written notice of intent to terminate and shall be entitled to severance compensation.

4.0 GENERAL CONDITIONS OF EMPLOYMENT. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, for any reason, subject only to the provisions of this Agreement and statutory requirements. Furthermore, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from her position with Employer, subject only to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

CITY OF LAKE ELMO

By: 
Dean A. Zuleger, Administrator

FINANCE DIRECTOR

By: 
Cathy Bendel Schachtner

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-010

**RESOLUTION TERMINATING THE EMPLOYMENT CONTRACT OF FINANCE
DIRECTOR CATHY BENDEL AND APPROVING A SEVERANCE AGREEMENT AND
RELEASE OF CLAIMS**

WHEREAS, Cathy Bendel (“Employee”) has been employed as Finance Director with the City of Lake Elmo (the “City”) since March 19, 2012, pursuant to an employment contract; and

WHEREAS, Employee’s employment contract provides that the Finance Director will serve at the will of the City Administrator and the City Council and may be terminated with or without cause at any time;

WHEREAS, at a special meeting of the City Council on January 31, 2017, the City Council considered and approved the termination of Employee’s employment contract pursuant to its terms, which includes four months of severance pay and 30 days written notice of intent to terminate; and

WHEREAS, the City Administrator has recommended that Employee be offered a severance payment above and beyond that offered in Employee’s employment contract; and

WHEREAS, the severance payment being recommended is outlined in the Severance Agreement and Release of Claims (“Severance Agreement”) attached hereto as Exhibit A; and

WHEREAS, the City Council wishes to approve the Severance Agreement and establish a final date and time for execution of the Severance Agreement by the Employee.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The above-referenced recitals are incorporated herein to this Resolution.

2. The City Council of the City of Lake Elmo hereby approves the termination of Employee's employment contract effective March 2, 2017.
3. On February 1, 2017, the Employee shall be placed on a paid leave status until the effective date of the termination on March 2, 2017. No later than February 1, 2017, the Employee shall give her keys to all City offices and all work-related passwords to the City Administrator. If the Employee resigns and executes the Severance Agreement, her paid leave status shall expire and the terms of that Agreement shall govern.
4. The City Council also approves the Severance Agreement attached as Exhibit A.
5. The City Council directs City staff to advise Employee of the decision to terminate her employment contract with the City of Lake Elmo and to also offer the Severance Agreement to Employee as set forth in Exhibit A.
6. The City Council establishes the final date and time for execution of the Severance Agreement by the Employee as on or before February 28, 2017, at 5:00 p.m.
7. The Severance Agreement shall be deemed null and void if not executed by Employee and returned to the City Administrator on or before February 28, 2017, at 5:00 p.m.
8. The City Council of the City of Lake Elmo directs City staff to prepare the appropriate documents and agreements to facilitate the offering and execution of a Severance Agreement as provided herein.

Passed and duly adopted this _____ day of _____, 2017, by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

EXHIBIT A

**SEVERANCE AGREEMENT AND RELEASE OF CLAIMS
BETWEEN THE CITY OF LAKE ELMO, MINNESOTA
AND CATHY BENDEL**

THIS AGREEMENT is made and entered into this _____ day of _____, 2017 by and between the City of Lake Elmo, Minnesota (the “City”), and Cathy Bendel (the “Employee”).

WITNESSETH:

WHEREAS, the Employee has been employed by the City since March 19, 2012; and

WHEREAS, both the City and the Employee have concluded that it is in the best interests of both parties that the employment of the Employee by the City be discontinued in accordance with the following terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the following mutual covenants and agreements, the sufficiency of which is hereby acknowledged by both parties, the City and the Employee agree as follows:

1. Resignation. The Employee hereby submits her resignation as Finance Director effective _____. The City and the Employee waive any notice that would otherwise be required.
2. Assistance with Transition. The Employee shall assist with the transition caused by this resignation. Within 2 days of the execution of this Agreement, the Employee shall provide all passwords and access codes to any and all software. The Employee shall respond to any request made by the city administrator, or staff regarding the previous mentioned information or the location or whereabouts of any information or files relating to the execution of the duties of Finance Director no later than by 10 a.m. the next business day.
3. Severance Pay.
 - a. The City shall pay the Employee for all time employed for the City up to her resignation date, reduced by applicable federal and state taxes, employment taxes, and other customary withholdings, in settlement of all salary, overtime compensation, compensatory time, claims in law and equity, as well as any administrative claims that the Employee may have against the City or its officers, agents, employees or insurers. The payment shall be made at the first regular payroll cycle of the City following the Employee’s resignation and compliance with paragraph 2 in a check made payable to Cathy Bendel.

- b. The City shall pay the Employee for any outstanding balance of paid time off (“PTO”). As of March 2, 2017, the balance of hours in the Employee’s PTO account is 220 hours. This amount equates to \$8,844.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings. This payment shall be made in a lump sum payment once all rescission periods have passed.
- c. The City shall pay the Employee an amount equal to six (6) months of salary or \$41,808.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings.
- d. The Employee is entitled to continuation of her health insurance benefits pursuant to the Consolidated Omnibus Reconciliation Act (“COBRA”), 29 U.S.C. § 1161, *et seq.* If the Employee elects to continue her coverage pursuant to COBRA, she is responsible for payment of her health insurance premiums.

The Employee acknowledges that the payments described above are sufficient consideration for the Agreement.

4. Release. In consideration of the above referenced Severance Pay at paragraph 3, the Employee, for herself, her heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the City, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors, and assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys’ fees and costs and expenses, including but not limited to all claims of any kind arising out of the Employee’s employment, including but not limited to harassment, discrimination, wrongful termination, defamation, intentional/reckless/negligent infliction of emotional distress, constructive discharge, claims under the City’s employee handbook, or any actions arising from discussions in efforts to negotiate the Agreement.

In consideration of the above referenced Severance Pay at paragraph 3, the Employee further acknowledges that she is knowingly and voluntarily waiving all possible rights or claims arising under: the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A; Equal Employment Opportunity Act; Americans with Disabilities Act of 1990, As Amended; Age Discrimination in Employment Act; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – e-17; Family and Medical Leave Act, 29 U.S.C. §§ 2601-54; Americans with Disabilities Act, 42 U.S.C. § 12101-117; the Rehabilitation Act of 1973, 29 U.S.C. § 701-96i; the Public Employment Labor Relations Act, Minn. Stat. §§ 179A.01-.30; the Minnesota Occupational Health and Safety Act, Minn. Stat. §§ 182.65-.676; the Minnesota Whistleblower Act, Minn. Stat. §§ 181.931-.935; and the state and federal Fair Labor Standards Acts, 29 U.S.C. §§ 201-19, Minn. Stat. §§ 177.21-.35. Employee acknowledges that she has had an opportunity to consult with her attorney concerning the waiver and content of the rights available under these laws.

It is specifically understood that the aforementioned Release is intended to include only those claims arising from any conduct, event, or transaction occurring prior to the date of this

Agreement and intended to include any and all claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

The Employee further acknowledges that she fully understands the terms of this Separation Agreement and Release of Claims, that pursuant to the Age Discrimination in Employment Act, she has had 21 days to consider it and seek the advice of her attorney and/or financial advisor, and that she is signing it freely and voluntarily. The Employee understands that if she signs this Agreement and Release prior to the expiration of the 21-day period, that act constitutes a waiver of her right to consider the Agreement for 21 days.

The Employee understands that this is a resignation and acknowledges that she is waiving any rights under city ordinance or state law, including any rights she may have to a hearing.

5. Representation by Counsel. The Employee represents to the City that she has had an opportunity to consult counsel of her choosing with respect to this Agreement and all matters covered by and relating to it. The Employee further agrees and represents that she has not received or relied upon any advice or representations by the City or the City's counsel in entering into this Agreement. The Agreement shall be binding upon the Employee and her attorneys and inure to the benefit of the City and its respective successors, assigns, subsidiaries, heirs, executors, personal representatives, and agents.

6. Post-Separation Consultation. Employee and the City recognize the value in Employee assisting the City during the transitional period following her resignation date. Accordingly, Employee agrees to make herself actively, reasonably, and readily available to assist the City by providing consultation and advice on matters that were previously within the scope of her job duties for a period not to exceed sixty (60) days by phone or in person as is convenient to Employee.

7. No Admission of Liability. It is specifically understood that by reason of agreeing to the Agreement, the parties hereby released admit absolutely no liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort, and it is further specifically understood that the Agreement shall not be construed as an admission of liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort on the part of any party.

7. Voluntary and Knowing Action. The parties acknowledge that they have thoroughly read and understand the terms of the Agreement, and that they are voluntarily entering into the Agreement to resolve the matter.

8. Rescission/Revocation. The Agreement is subject to the following rescission/revocation periods as provided by law:

Age Discrimination in Employment Act, 7 days, 29 U.S.C. § 626(f)(1)(G);
Minnesota Human Rights Act, 15 days, Minn. Stat. § 363A.31, subd. 2.

Once the Agreement has been executed, the Employee understands that she has the right to rescind and/or revoke the waivers and releases contained in this Agreement. To be effective, the rescission or revocation must be in writing and delivered to the City either by hand or by

mail within the 7-day period for the Age Discrimination in Employment Act, or within the 15-day period for the Minnesota Human Rights Act. If delivered by mail, the rescission or revocation must be:

- (a) postmarked within the applicable 7- or 15-day period;
- (b) properly addressed to the City; and
- (c) sent by certified mail, return receipt requested.

The City's address is as follows: City Hall
Attention: City Administrator
3800 Laverne Avenue North
Lake Elmo, MN 55042

9. Complete Agreement. The parties acknowledge and represent that no promise or representation not contained in the Agreement has been made to them.

10. Governing Law. The Agreement will be construed, enforced, and governed in accordance with the laws of the State of Minnesota.

11. Reasons for Agreement. Pursuant to Minn. Stat. § 13.43, subd. 2(a)(6), the City states that the reason it is entering into this settlement agreement is to amicably separate the employment relationship with Employee, and provide her with certain benefits in light of her resignation from employment.

IN WITNESS WHEREOF, the City and the Employee have approved and executed the Agreement this _____ day of _____, 2017.

CITY OF LAKE ELMO

EMPLOYEE

By: _____
Mayor

Cathy Bendel

By: _____
City Administrator

**SEVERANCE AGREEMENT AND RELEASE OF CLAIMS
BETWEEN THE CITY OF LAKE ELMO, MINNESOTA
AND CATHY BENDEL**

THIS AGREEMENT is made and entered into this _____ day of _____, 2017 by and between the City of Lake Elmo, Minnesota (the "City"), and Cathy Bendel (the "Employee").

WITNESSETH:

WHEREAS, the Employee has been employed by the City since March 19, 2012; and

WHEREAS, upon instigation by the City, both the City and Employee have concluded that it is in the best interests of both parties that the employment of the Employee by the City be discontinued in accordance with the following terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the following mutual covenants and agreements, the sufficiency of which is hereby acknowledged by both parties, the City and the Employee agree as follows:

1. Termination. ~~Employee and the~~ The City hereby ~~agree that the~~ terminates Employee ~~be terminated from her~~ as its Finance Director ~~position~~ effective March 2, 2017. On February 1, 2017, Employee shall be placed on a paid leave status until the effective date of termination. The City and the Employee waive any notice that would otherwise be required.

2. Assistance with Transition. Employee shall assist with the transition caused by this termination. Within two days of the execution of this Agreement, the Employee shall provide all passwords and access codes to any and all software. During the period of paid leave, Employee shall use best efforts to respond to any request made by the City Administrator or staff regarding the previously mentioned information or the location or whereabouts of any information or files relating to the execution of the duties of Finance Director no later than by 10 a.m. the next business day.

3. Severance Pay.

- a. The City shall pay Employee for all time employed for the City up to the effective date of termination, reduced by applicable federal and state taxes, employment taxes, and other customary withholdings, in settlement of all salary, overtime compensation, compensatory time, claims in law and equity, as well as any administrative claims that the Employee may have against the City or its officers, agents, employees or insurers. The payment shall be made at the first regular payroll cycle

of the City following the Employee's termination and compliance with paragraph 2 in a check made payable to Cathy Bendel.

- b. The City shall also pay Employee for any outstanding balance of paid time off ("PTO"). As of March 2, 2017, the balance of hours in the Employee's PTO account is 220 hours. This amount equates to \$8,844.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings. This payment shall be made in a lump sum payment once all rescission periods have passed.
- c. The City shall also pay Employee an amount equal to six months of salary or \$41,808.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings.
- d. Employee shall be eligible to continue participation in the group medical and dental plan only in which she currently participates for a period not to exceed six months from the date of termination. Contingent upon Employee's continued compliance with this Agreement, the City will continue to pay its share of the premium for this plan on the same basis as exists on the date of this Agreement for the full six-month period, or until Employee becomes eligible for medical and dental coverage through another employer, whichever is earlier. The City will deduct an amount equivalent to the employee's share of six months' worth of premiums for the medical plan from the severance payment being made by the City pursuant to paragraph 3 (a) of this Agreement, such amount being \$1,979.51. After the six month period is over, and assuming that the Employee does not become eligible for medical coverage through another employer, the Employee is entitled to continuation of her health insurance benefits pursuant to the Consolidated Omnibus Reconciliation Act ("COBRA"), 29 U.S.C. § 1161, *et seq.* If the Employee elects to continue her coverage pursuant to COBRA, she is responsible for payment of her health insurance premiums.
- e. The City agrees that Employee has performed her duties professionally and that the City will communicate this fact to any person or entity upon Employee's request.

The Employee acknowledges that the payments described above are sufficient consideration for the Agreement.

4. Employee Release. In consideration of the above referenced Severance Pay at paragraph 3, the Employee, for herself, her heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the City, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors, and

assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys' fees and costs and expenses, including but not limited to all claims of any kind arising out of the Employee's employment, including but not limited to harassment, discrimination, retaliation, wrongful termination, defamation, intentional/reckless/negligent infliction of emotional distress, constructive discharge, claims under the City's employee handbook, or any actions arising from discussions in efforts to negotiate the Agreement.

In consideration of the above referenced Severance Pay at paragraph 3, the Employee further acknowledges that she is knowingly and voluntarily waiving all possible rights or claims arising under: the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A; Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13; Equal Employment Opportunity Act; Americans with Disabilities Act of 1990, As Amended; Age Discrimination in Employment Act; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – e-17; Family and Medical Leave Act, 29 U.S.C. §§ 2601-54; Americans with Disabilities Act, 42 U.S.C. § 12101-117; the Rehabilitation Act of 1973, 29 U.S.C. § 701-96i; the Public Employment Labor Relations Act, Minn. Stat. §§ 179A.01-.30; the Minnesota Occupational Health and Safety Act, Minn. Stat. §§ 182.65-.676; the Minnesota Whistleblower Act, Minn. Stat. §§ 181.931-.935; and the state and federal Fair Labor Standards Acts, 29 U.S.C. §§ 201-19, Minn. Stat. §§ 177.21-.35. Employee acknowledges that she has had an opportunity to consult with her attorney concerning the waiver and content of the rights available under these laws.

It is specifically understood that the aforementioned Release is intended to include only those claims arising from any conduct, event, or transaction occurring prior to the date of this Agreement and intended to include any and all claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

The Employee further acknowledges that she fully understands the terms of this Separation Agreement and Release of Claims, that pursuant to the Age Discrimination in Employment Act, she has had 21 days to consider it and seek the advice of her attorney and/or financial advisor, and that she is signing it freely and voluntarily. The Employee understands that if she signs this Agreement and Release prior to the expiration of the 21-day period, that act constitutes a waiver of her right to consider the Agreement for 21 days.

The Employee understands that this is a termination accepted by the Employee in return for the consideration to Employee expressed herein and acknowledges that she is waiving any rights under city ordinance or state law, including any rights she may have to a hearing.

5. City Release. In consideration of Employee releasing her claims in paragraph 4, the City, for itself, its past and present officials, employees, and agents, and successors and assigns (collectively, the "City Releasers"), hereby releases and forever

discharges Employee, and her attorneys, agents, representatives, heirs, executors, and assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys' fees and costs and expenses, including but not limited to all claims of any kind arising out of Employee's employment with the City or any actions arising from discussions in efforts to negotiate the Agreement (collectively, the "Claims"). ~~To the extent required by law, the~~ The City shall fully indemnify, defend, and hold Employee harmless from any such Claims by any of the City Releasers.

It is specifically understood that the aforementioned Release is intended to include only those Claims arising from any conduct, event, or transaction occurring prior to the date of this Agreement and intended to include any and all Claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

6. Representation by Counsel. Employee represents to the City that she has had an opportunity to consult counsel of her choosing with respect to this Agreement and all matters covered by and relating to it. Employee further agrees and represents that she has not received or relied upon any advice or representations by the City or the City's counsel in entering into this Agreement. The Agreement shall be binding upon Employee and her attorneys and inure to the benefit of the City and its respective successors, assigns, subsidiaries, heirs, executors, personal representatives, and agents.

7. Post-Separation Consultation. Employee and the City recognize the value in Employee assisting the City during the transitional period following her termination date. Accordingly, Employee agrees to make herself actively, reasonably, and readily available to assist the City by providing consultation and advice on matters that were previously within the scope of her job duties for a period not to exceed 60 days from the termination date by phone or email as is convenient to Employee. The number of hours that Employee shall be available shall be limited to one hour per business day during the 60 day period.

8. No Admission of Liability. It is specifically understood that by reason of agreeing to the Agreement, the parties hereby released admit absolutely no liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort, and it is further specifically understood that the Agreement shall not be construed as an admission of liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort on the part of any party.

9. Voluntary and Knowing Action. The parties acknowledge that they have thoroughly read and understand the terms of the Agreement, and that they are voluntarily entering into the Agreement to resolve the matter.

10. Rescission/Revocation. The Agreement is subject to the following rescission/revocation periods as provided by law:

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Minnesota Human Rights Act, 15 days, Minn. Stat. § 363A.31, subd. 2.

Once the Agreement has been executed, the Employee understands that she has the right to rescind and/or revoke the waivers and releases contained in this Agreement. To be effective, the rescission or revocation must be in writing and delivered to the City either by hand or by mail within the 7-day period for the Age Discrimination in Employment Act, or within the 15-day period for the Minnesota Human Rights Act. If delivered by mail, the rescission or revocation must be:

- (a) postmarked within the applicable 7- or 15-day period;
- (b) properly addressed to the City; and
- (c) sent by certified mail, return receipt requested.

**The City's address is as follows: City Hall
 Attention: City Administrator
 3800 Laverne Avenue North
 Lake Elmo, MN 55042**

11. Complete Agreement. The parties acknowledge and represent that no promise or representation not contained in the Agreement has been made to them.

12. Governing Law. The Agreement will be construed, enforced, and governed in accordance with the laws of the State of Minnesota.

13. Reasons for Agreement. Pursuant to Minn. Stat. § 13.43, subd. 2(a)(6), the City states that the reason it is entering into this settlement agreement is to amicably separate the employment relationship with Employee, and provide her with certain benefits in light of her termination from employment.

IN WITNESS WHEREOF, the City and the Employee have approved and executed the Agreement this _____ day of _____, 2017.

CITY OF LAKE ELMO

EMPLOYEE

By: _____
Mayor

Cathy Bendel

By: _____
City Administrator

Document comparison by Workshare Compare on Tuesday, January 31, 2017
1:40:51 PM

Input:	
Document 1 ID	PowerDocs://DOCSOPEN/492923/6
Description	DOCSOPEN-#492923-v6-Separation_Agt_and_Release_of_Claims
Document 2 ID	PowerDocs://DOCSOPEN/492923/7
Description	DOCSOPEN-#492923-v7-Separation_Agt_and_Release_of_Claims
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	8
Deletions	6
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	14

EXHIBIT A

**SEVERANCE AGREEMENT AND RELEASE OF CLAIMS
BETWEEN THE CITY OF LAKE ELMO, MINNESOTA
AND CATHY BENDEL**

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WHEREAS, both the City and the Employee have concluded that it is in the best interests of both parties that the employment of the Employee by the City be discontinued in accordance with the following terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the following mutual covenants and agreements, the sufficiency of which is hereby acknowledged by both parties, the City and the Employee agree as follows:

1. Resignation. The Employee hereby submits her resignation as Finance Director effective _____. The City and the Employee waive any notice that would otherwise be required.
2. Assistance with Transition. The Employee shall assist with the transition caused by this resignation. Within 2 days of the execution of this Agreement, the Employee shall provide all passwords and access codes to any and all software. The Employee shall respond to any request made by the city administrator, or staff regarding the previous mentioned information or the location or whereabouts of any information or files relating to the execution of the duties of Finance Director no later than by 10 a.m. the next business day.
3. Severance Pay.
 - a. The City shall pay the Employee for all time employed for the City up to her resignation date, reduced by applicable federal and state taxes, employment taxes, and other customary withholdings, in settlement of all salary, overtime compensation, compensatory time, claims in law and equity, as well as any administrative claims that the Employee may have against the City or its officers, agents, employees or insurers. The payment shall be made at the first regular payroll cycle of the City following the Employee's resignation and compliance with paragraph 2 in a check made payable to Cathy Bendel.

- b. The City shall pay the Employee for any outstanding balance of paid time off (“PTO”). As of March 2, 2017, the balance of hours in the Employee’s PTO account is 220 hours. This amount equates to \$8,844.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings. This payment shall be made in a lump sum payment once all rescission periods have passed.
- c. The City shall pay the Employee an amount equal to six (6) months of salary or \$41,808.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings.
- d. The Employee is entitled to continuation of her health insurance benefits pursuant to the Consolidated Omnibus Reconciliation Act (“COBRA”), 29 U.S.C. § 1161, *et seq.* If the Employee elects to continue her coverage pursuant to COBRA, she is responsible for payment of her health insurance premiums.

The Employee acknowledges that the payments described above are sufficient consideration for the Agreement.

4. Release. In consideration of the above referenced Severance Pay at paragraph 3, the Employee, for herself, her heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the City, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors, and assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys’ fees and costs and expenses, including but not limited to all claims of any kind arising out of the Employee’s employment, including but not limited to harassment, discrimination, wrongful termination, defamation, intentional/reckless/negligent infliction of emotional distress, constructive discharge, claims under the City’s employee handbook, or any actions arising from discussions in efforts to negotiate the Agreement.

In consideration of the above referenced Severance Pay at paragraph 3, the Employee further acknowledges that she is knowingly and voluntarily waiving all possible rights or claims arising under: the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A; Equal Employment Opportunity Act; Americans with Disabilities Act of 1990, As Amended; Age Discrimination in Employment Act; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – e-17; Family and Medical Leave Act, 29 U.S.C. §§ 2601-54; Americans with Disabilities Act, 42 U.S.C. § 12101-117; the Rehabilitation Act of 1973, 29 U.S.C. § 701-96i; the Public Employment Labor Relations Act, Minn. Stat. §§ 179A.01-.30; the Minnesota Occupational Health and Safety Act, Minn. Stat. §§ 182.65-.676; the Minnesota Whistleblower Act, Minn. Stat. §§ 181.931-.935; and the state and federal Fair Labor Standards Acts, 29 U.S.C. §§ 201-19, Minn. Stat. §§ 177.21-.35. Employee acknowledges that she has had an opportunity to consult with her attorney concerning the waiver and content of the rights available under these laws.

It is specifically understood that the aforementioned Release is intended to include only those claims arising from any conduct, event, or transaction occurring prior to the date of this

Agreement and intended to include any and all claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

The Employee further acknowledges that she fully understands the terms of this Separation Agreement and Release of Claims, that pursuant to the Age Discrimination in Employment Act, she has had 21 days to consider it and seek the advice of her attorney and/or financial advisor, and that she is signing it freely and voluntarily. The Employee understands that if she signs this Agreement and Release prior to the expiration of the 21-day period, that act constitutes a waiver of her right to consider the Agreement for 21 days.

The Employee understands that this is a resignation and acknowledges that she is waiving any rights under city ordinance or state law, including any rights she may have to a hearing.

5. Representation by Counsel. The Employee represents to the City that she has had an opportunity to consult counsel of her choosing with respect to this Agreement and all matters covered by and relating to it. The Employee further agrees and represents that she has not received or relied upon any advice or representations by the City or the City's counsel in entering into this Agreement. The Agreement shall be binding upon the Employee and her attorneys and inure to the benefit of the City and its respective successors, assigns, subsidiaries, heirs, executors, personal representatives, and agents.

6. Post-Separation Consultation. Employee and the City recognize the value in Employee assisting the City during the transitional period following her resignation date. Accordingly, Employee agrees to make herself actively, reasonably, and readily available to assist the City by providing consultation and advice on matters that were previously within the scope of her job duties for a period not to exceed sixty (60) days by phone or in person as is convenient to Employee.

7. No Admission of Liability. It is specifically understood that by reason of agreeing to the Agreement, the parties hereby released admit absolutely no liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort, and it is further specifically understood that the Agreement shall not be construed as an admission of liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort on the part of any party.

7. Voluntary and Knowing Action. The parties acknowledge that they have thoroughly read and understand the terms of the Agreement, and that they are voluntarily entering into the Agreement to resolve the matter.

8. Rescission/Revocation. The Agreement is subject to the following rescission/revocation periods as provided by law:

Age Discrimination in Employment Act, 7 days, 29 U.S.C. § 626(f)(1)(G);
Minnesota Human Rights Act, 15 days, Minn. Stat. § 363A.31, subd. 2.

Once the Agreement has been executed, the Employee understands that she has the right to rescind and/or revoke the waivers and releases contained in this Agreement. To be effective, the rescission or revocation must be in writing and delivered to the City either by hand or by

mail within the 7-day period for the Age Discrimination in Employment Act, or within the 15-day period for the Minnesota Human Rights Act. If delivered by mail, the rescission or revocation must be:

- (a) postmarked within the applicable 7- or 15-day period;
- (b) properly addressed to the City; and
- (c) sent by certified mail, return receipt requested.

The City's address is as follows: City Hall
Attention: City Administrator
3800 Laverne Avenue North
Lake Elmo, MN 55042

9. Complete Agreement. The parties acknowledge and represent that no promise or representation not contained in the Agreement has been made to them.

10. Governing Law. The Agreement will be construed, enforced, and governed in accordance with the laws of the State of Minnesota.

11. Reasons for Agreement. Pursuant to Minn. Stat. § 13.43, subd. 2(a)(6), the City states that the reason it is entering into this settlement agreement is to amicably separate the employment relationship with Employee, and provide her with certain benefits in light of her resignation from employment.

IN WITNESS WHEREOF, the City and the Employee have approved and executed the Agreement this _____ day of _____, 2017.

CITY OF LAKE ELMO

EMPLOYEE

By: _____
Mayor

Cathy Bendel

By: _____
City Administrator

**FINANCE DIRECTOR CONTRACT
CITY OF LAKE ELMO
CATHY BENDEL SCHACHTNER**

1.0 PARTIES. The Agreement is date the 19th day of March, 2012 and is entered into by and between the City of Lake Elmo, a Minnesota statutory city ("City) and Cathy Bendel Schachtner ("Finance Director").

2.0 TERMS AND CONDITIONS. The City Hereby agrees to employ the Finance Director and the Finance Director agrees to accept employment according to the following terms and conditions:

- A. Compensation/Performance Evaluation.** Beginning salary will be \$70,000 per year. Performance evaluations will be conducted bi-annually or earlier if directed by the City Council. A salary adjustment to \$72,000 per year will be engaged if the Finance Director receives a satisfactory performance evaluation in September of 2012. Future salary adjustments shall be commensurate with any annual increase as awarded to City Employees (e.g. cost of living) at the discretion of the City Council. Other compensation increases, if any, will be awarded at the City Council discretion.
- B. Retirement/Deferred Compensation.** The City shall contribute to PERA as required by State law for Finance Director or an alternate pension plan, if selected by Finance Director, authorized by State law.
- C. Insurance.** Finance Director will be provided health, dental, life and disability insurance coverage in same manner and at the same level as made available for City employees.
- D. Holidays.** Finance Director will be entitled to the holidays specified in the governing policy manual adopted by the City of Lake Elmo.
- E. Personal Time Off (PTO).** Upon employment, Finance Director will receive a 40-hour bank of PTO. Thereafter, Finance Director will accrue PTO at the rate specified in the governing policy manual. Finance Director may carryover from year to year up to a maximum of that allowed by the governing policy manual adopted by the City (currently 240 hours of PTO). Finance Director shall accrue at the rate for five to ten years of service (currently 6.5 hours bi-weekly), and after two years of service shall accrue at the rate for 10 to 15 years of service (currently 8.0 hours bi-weekly), and thereafter shall accrue at the rate allowed by the governing policy manual adopted by the City. The PTO bank balance is paid out upon separation. The payment shall not be considered a severance benefit or severance compensation as such terms are used in paragraph 3.0 of this Agreement.
- F. Automobile/Expenses.** Finance Director shall be entitled to be reimbursed for mileage incurred in the performance of City business at the prevailing IRS rates.
- G. Dues/Conferences/Subscriptions.** The City will pay for due and related membership costs to the MNGFOA and the GFOA, provided routine attendance is to both regular meetings and annual continuing education conferences. Any out of state travel must be approved in advance by the City Council.

H. **Cell Phone.** Finance Director will be provided a City cell phone for business calls.

I. **Start Date:** March 19, 2012

3.0 TERMINATION OF AGREEMENT. Finance Director will serve at the will of the City Administrator and the City Council and may be terminated with or without cause at any time. Any of the following will constitute termination for cause and would result in no severance benefit:

1. Willful neglect of duty.
2. Gross inefficiency or incompetence in office that Finance Director has failed to correct after a reasonable written notice.
3. Malfeasance in Office, or actions which involve moral turpitude or would bring the City into disrepute, conviction for an illegal act involving personal gain to Employee.

Should the City terminate Finance Director's employment without cause, the City Council will give the Finance Director thirty (30) days written notice of termination. In the event of termination without cause, the Finance Director shall be entitled to the following compensation:

1. 0 – 36 months – two (2) months regular salary;
2. 36-48 months – three (3) months regular salary;
3. 48 months or more – four (4) months of regular salary.

If the Finance Director decides to terminate employment with the City of Lake Elmo, the Finance Director is required to give a minimum of thirty (30) days written notice of intent to terminate and shall be entitled to severance compensation.

4.0 GENERAL CONDITIONS OF EMPLOYMENT. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, for any reason, subject only to the provisions of this Agreement and statutory requirements. Furthermore, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from her position with Employer, subject only to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

CITY OF LAKE ELMO

By: Dean A. Zueger
Dean A. Zueger, Administrator

FINANCE DIRECTOR

By: Cathy Bendel
Cathy Bendel Schachtner



STAFF REPORT

DATE: January 31, 2017

MOTION

TO: Mayor and City Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: Finance Director Bendel's Employment Contract

BACKGROUND:

When Cathy Bendel was hired by the City on March 19, 2012, the Finance Director and City entered into an employment contract. A copy of the contract is attached.

ISSUE BEFORE COUNCIL:

Should the Council terminate the Finance Director's agreement?

PROPOSAL DETAILS/ANALYSIS:

Section 3 of the contract lays out the termination provisions, both for cause and without cause. I am recommending the City Council exercise the option to terminate without cause. In this event, the City Council will give the Finance Director 30 days written notice. Furthermore, since the Finance Director has been here more than 48 months she would be entitled to four months regular salary.

Resolution No. 2017-010 included in your packet approves termination of the contract without cause and would place the Finance Director on a 30-day paid leave until the effective date of the termination, unless she resigns earlier. Additionally, it offers the option to the Finance Director of a severance agreement, which includes six months salary if the agreement is executed by February 28, 2017.

FISCAL IMPACT:

Four months salary is \$27,872

Six months salary is \$41,808

In addition, the paid time off (PTO) balance will be 220 hours by March 2, 2017 (the end of the 30-day notice period) and valued at \$8,844.

OPTIONS:

- 1) Approve Resolution No. 2017-010
- 2) Amend and then Approve Resolution No. 2017-010
- 3) Do not terminate the Finance Director's employment agreement

RECOMMENDATION:

"Motion to approve Resolution No. 2017-010."

ATTACHMENTS:

- Finance Director Contract
- Resolution No. 2017-010

**SEVERANCE AGREEMENT AND RELEASE OF CLAIMS
BETWEEN THE CITY OF LAKE ELMO, MINNESOTA
AND CATHY BENDEL**

THIS AGREEMENT is made and entered into this _____ day of _____, 2017 by and between the City of Lake Elmo, Minnesota (the “City”), and Cathy Bendel (the “Employee”).

WITNESSETH:

WHEREAS, the Employee has been employed by the City since March 19, 2012; and

WHEREAS, upon instigation by the City, both the City and Employee have concluded that it is in the best interests of both parties that the employment of the Employee by the City be discontinued in accordance with the following terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the following mutual covenants and agreements, the sufficiency of which is hereby acknowledged by both parties, the City and the Employee agree as follows:

1. Consensual Termination. The City hereby terminates Employee as its Finance Director effective March 2, 2017. On February 1, 2017, Employee shall be placed on a paid leave status until the effective date of termination. The City and the Employee waive any notice that would otherwise be required.

2. Assistance with Transition. Employee shall assist with the transition caused by this termination. Within two days of the execution of this Agreement, the Employee shall provide all passwords and access codes to any and all software. During the period of paid leave, Employee shall use best efforts to respond to any request made by the City Administrator or staff regarding the previously mentioned information or the location or whereabouts of any information or files relating to the execution of the duties of Finance Director no later than by 10 a.m. the next business day.

3. Severance Pay.

- a. The City shall pay Employee for all time employed for the City up to the effective date of termination, reduced by applicable federal and state taxes, employment taxes, and other customary withholdings, in settlement of all salary, overtime compensation, compensatory time, claims in law and equity, as well as any administrative claims that the Employee may have against the City or its officers, agents, employees or insurers. The payment shall be made at the first regular payroll cycle of the City following the Employee’s termination and

compliance with paragraph 2 in a check made payable to Cathy Bendel.

- b. The City shall also pay Employee for any outstanding balance of paid time off ("PTO"). As of March 2, 2017, the balance of hours in the Employee's PTO account is 220 hours. This amount equates to \$8,844.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings. This payment shall be made in a lump sum payment once all rescission periods have passed.
- c. The City shall also pay Employee an amount equal to six months of salary or \$41,808.00 prior to being reduced by applicable federal and state taxes, employment taxes, and other customary withholdings.
- d. Employee shall be eligible to continue participation in the group medical and dental plan only in which she currently participates for a period not to exceed six months from the date of termination. Contingent upon Employee's continued compliance with this Agreement, the City will continue to pay its share of the premium for this plan on the same basis as exists on the date of this Agreement for the full six-month period, or until Employee becomes eligible for medical and dental coverage through another employer, whichever is earlier. The City will deduct an amount equivalent to the employee's share of six months' worth of premiums for the medical plan from the severance payment being made by the City pursuant to paragraph 3 (a) of this Agreement, such amount being \$1,979.51. After the six month period is over, and assuming that the Employee does not become eligible for medical coverage through another employer, the Employee is entitled to continuation of her health insurance benefits pursuant to the Consolidated Omnibus Reconciliation Act ("COBRA"), 29 U.S.C. § 1161, *et seq.* If the Employee elects to continue her coverage pursuant to COBRA, she is responsible for payment of her health insurance premiums.
- e. The City agrees that Employee has performed her duties professionally and that the City will communicate this fact to any person or entity upon Employee's request.

The Employee acknowledges that the payments described above are sufficient consideration for the Agreement.

4. Employee Release. In consideration of the above referenced Severance Pay at paragraph 3, the Employee, for herself, her heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the City, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors, and

assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys' fees and costs and expenses, including but not limited to all claims of any kind arising out of the Employee's employment, including but not limited to harassment, discrimination, retaliation, wrongful termination, defamation, intentional/reckless/negligent infliction of emotional distress, constructive discharge, claims under the City's employee handbook, or any actions arising from discussions in efforts to negotiate the Agreement.

In consideration of the above referenced Severance Pay at paragraph 3, the Employee further acknowledges that she is knowingly and voluntarily waiving all possible rights or claims arising under: the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A; Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13; Equal Employment Opportunity Act; Americans with Disabilities Act of 1990, As Amended; Age Discrimination in Employment Act; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – e-17; Family and Medical Leave Act, 29 U.S.C. §§ 2601-54; Americans with Disabilities Act, 42 U.S.C. § 12101-117; the Rehabilitation Act of 1973, 29 U.S.C. § 701-96i; the Public Employment Labor Relations Act, Minn. Stat. §§ 179A.01-.30; the Minnesota Occupational Health and Safety Act, Minn. Stat. §§ 182.65-.676; the Minnesota Whistleblower Act, Minn. Stat. §§ 181.931-.935; and the state and federal Fair Labor Standards Acts, 29 U.S.C. §§ 201-19, Minn. Stat. §§ 177.21-.35. Employee acknowledges that she has had an opportunity to consult with her attorney concerning the waiver and content of the rights available under these laws.

It is specifically understood that the aforementioned Release is intended to include only those claims arising from any conduct, event, or transaction occurring prior to the date of this Agreement and intended to include any and all claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

The Employee further acknowledges that she fully understands the terms of this Separation Agreement and Release of Claims, that pursuant to the Age Discrimination in Employment Act, she has had 21 days to consider it and seek the advice of her attorney and/or financial advisor, and that she is signing it freely and voluntarily. The Employee understands that if she signs this Agreement and Release prior to the expiration of the 21-day period, that act constitutes a waiver of her right to consider the Agreement for 21 days.

The Employee understands that this is a termination accepted by the Employee in return for the consideration to Employee expressed herein and acknowledges that she is waiving any rights under city ordinance or state law, including any rights she may have to a hearing.

5. City Release. In consideration of Employee releasing her claims in paragraph 4, the City, for itself, its past and present officials, employees, and agents, and successors and assigns (collectively, the "City Releasers"), hereby releases and forever

discharges Employee, and her attorneys, agents, representatives, heirs, executors, and assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys' fees and costs and expenses, including but not limited to all claims of any kind arising out of Employee's employment with the City or any actions arising from discussions in efforts to negotiate the Agreement (collectively, the "Claims"). The City shall fully indemnify, defend, and hold Employee harmless from any such Claims by any of the City Releasers.

It is specifically understood that the aforementioned Release is intended to include only those Claims arising from any conduct, event, or transaction occurring prior to the date of this Agreement and intended to include any and all Claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

6. Representation by Counsel. Employee represents to the City that she has had an opportunity to consult counsel of her choosing with respect to this Agreement and all matters covered by and relating to it. Employee further agrees and represents that she has not received or relied upon any advice or representations by the City or the City's counsel in entering into this Agreement. The Agreement shall be binding upon Employee and her attorneys and inure to the benefit of the City and its respective successors, assigns, subsidiaries, heirs, executors, personal representatives, and agents.

7. Post-Separation Consultation. Employee and the City recognize the value in Employee assisting the City during the transitional period following her termination date. Accordingly, Employee agrees to make herself actively, reasonably, and readily available to assist the City by providing consultation and advice on matters that were previously within the scope of her job duties for a period not to exceed 60 days from the termination date by phone or email as is convenient to Employee. The number of hours that Employee shall be available shall be limited to one hour per business day during the 60 day period.

8. No Admission of Liability. It is specifically understood that by reason of agreeing to the Agreement, the parties hereby released admit absolutely no liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort, and it is further specifically understood that the Agreement shall not be construed as an admission of liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort on the part of any party.

9. Voluntary and Knowing Action. The parties acknowledge that they have thoroughly read and understand the terms of the Agreement, and that they are voluntarily entering into the Agreement to resolve the matter.

10. Rescission/Revocation. The Agreement is subject to the following rescission/revocation periods as provided by law:

Age Discrimination in Employment Act, 7 days, 29 U.S.C. § 626(f)(1)(G);
Minnesota Human Rights Act, 15 days, Minn. Stat. § 363A.31, subd. 2.

Once the Agreement has been executed, the Employee understands that she has the right to rescind and/or revoke the waivers and releases contained in this Agreement. To be effective, the rescission or revocation must be in writing and delivered to the City either by hand or by mail within the 7-day period for the Age Discrimination in Employment Act, or within the 15-day period for the Minnesota Human Rights Act. If delivered by mail, the rescission or revocation must be:

- (a) postmarked within the applicable 7- or 15-day period;
- (b) properly addressed to the City; and
- (c) sent by certified mail, return receipt requested.

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 Attention: City Administrator
 3800 Laverne Avenue North
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11. Complete Agreement. The parties acknowledge and represent that no promise or representation not contained in the Agreement has been made to them.

12. Governing Law. The Agreement will be construed, enforced, and governed in accordance with the laws of the State of Minnesota.

13. Reasons for Agreement. Pursuant to Minn. Stat. § 13.43, subd. 2(a)(6), the City states that the reason it is entering into this settlement agreement is to amicably separate the employment relationship with Employee, and provide her with certain benefits in light of her termination from employment.

IN WITNESS WHEREOF, the City and the Employee have approved and executed the Agreement this _____ day of _____, 2017.

CITY OF LAKE ELMO

EMPLOYEE

By: _____
Mayor

Cathy Bendel

By: _____
City Administrator



**SEVERANCE AGREEMENT AND RELEASE OF CLAIMS
BETWEEN THE CITY OF LAKE ELMO, MINNESOTA
AND CATHY BENDEL**

THIS AGREEMENT is made and entered into this _____ day of _____, 2017 by and between the City of Lake Elmo, Minnesota (the "City"), and Cathy Bendel (the "Employee").

WITNESSETH:

WHEREAS, the Employee has been employed by the City since March 19, 2012; and

WHEREAS, upon instigation by the City, both the City and Employee have concluded that it is in the best interests of both parties that the employment of the Employee by the City be discontinued in accordance with the following terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the following mutual covenants and agreements, the sufficiency of which is hereby acknowledged by both parties, the City and the Employee agree as follows:

1. Termination. ~~Employee and the~~The City hereby ~~agree that the~~terminates Employee ~~be terminated from her~~as its Finance Director ~~position~~ effective March 2, 2017. On February 1, 2017, Employee shall be placed on a paid leave status until the effective date of termination. The City and the Employee waive any notice that would otherwise be required.

2. Assistance with Transition. Employee shall assist with the transition caused by this termination. Within two days of the execution of this Agreement, the Employee shall provide all passwords and access codes to any and all software. During the period of paid leave, Employee shall use best efforts to respond to any request made by the City Administrator or staff regarding the previously mentioned information or the location or whereabouts of any information or files relating to the execution of the duties of Finance Director no later than by 10 a.m. the next business day.

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- a. The City shall pay Employee for all time employed for the City up to the effective date of termination, reduced by applicable federal and state taxes, employment taxes, and other customary withholdings, in settlement of all salary, overtime compensation, compensatory time, claims in law and equity, as well as any administrative claims that the Employee may have against the City or its officers, agents, employees or insurers. The payment shall be made at the first regular payroll cycle

of the City following the Employee's termination and compliance with paragraph 2 in a check made payable to Cathy Bendel.

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assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys' fees and costs and expenses, including but not limited to all claims of any kind arising out of the Employee's employment, including but not limited to harassment, discrimination, retaliation, wrongful termination, defamation, intentional/reckless/negligent infliction of emotional distress, constructive discharge, claims under the City's employee handbook, or any actions arising from discussions in efforts to negotiate the Agreement.

In consideration of the above referenced Severance Pay at paragraph 3, the Employee further acknowledges that she is knowingly and voluntarily waiving all possible rights or claims arising under: the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A; Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13; Equal Employment Opportunity Act; Americans with Disabilities Act of 1990, As Amended; Age Discrimination in Employment Act; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e – e-17; Family and Medical Leave Act, 29 U.S.C. §§ 2601-54; Americans with Disabilities Act, 42 U.S.C. § 12101-117; the Rehabilitation Act of 1973, 29 U.S.C. § 701-96i; the Public Employment Labor Relations Act, Minn. Stat. §§ 179A.01-.30; the Minnesota Occupational Health and Safety Act, Minn. Stat. §§ 182.65-.676; the Minnesota Whistleblower Act, Minn. Stat. §§ 181.931-.935; and the state and federal Fair Labor Standards Acts, 29 U.S.C. §§ 201-19, Minn. Stat. §§ 177.21-.35. Employee acknowledges that she has had an opportunity to consult with her attorney concerning the waiver and content of the rights available under these laws.

It is specifically understood that the aforementioned Release is intended to include only those claims arising from any conduct, event, or transaction occurring prior to the date of this Agreement and intended to include any and all claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

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5. City Release. In consideration of Employee releasing her claims in paragraph 4, the City, for itself, its past and present officials, employees, and agents, and successors and assigns (collectively, the "City Releasers"), hereby releases and forever

discharges Employee, and her attorneys, agents, representatives, heirs, executors, and assigns of and from any and all, past, present, or future claims, demands, obligations, actions, or causes of action at law or in equity, whether arising by statute, common law, contract, or otherwise, and for all claims for damages of whatever kind or nature, and for all claims for attorneys' fees and costs and expenses, including but not limited to all claims of any kind arising out of Employee's employment with the City or any actions arising from discussions in efforts to negotiate the Agreement (collectively, the "Claims"). ~~To the extent required by law, the~~ The City shall fully indemnify, defend, and hold Employee harmless from any such Claims by any of the City Releasers.

It is specifically understood that the aforementioned Release is intended to include only those Claims arising from any conduct, event, or transaction occurring prior to the date of this Agreement and intended to include any and all Claims for unknown injuries and/or damages, unanticipated injuries and/or damages, and unexpected consequences of injuries and/or damages.

6. Representation by Counsel. Employee represents to the City that she has had an opportunity to consult counsel of her choosing with respect to this Agreement and all matters covered by and relating to it. Employee further agrees and represents that she has not received or relied upon any advice or representations by the City or the City's counsel in entering into this Agreement. The Agreement shall be binding upon Employee and her attorneys and inure to the benefit of the City and its respective successors, assigns, subsidiaries, heirs, executors, personal representatives, and agents.

7. Post-Separation Consultation. Employee and the City recognize the value in Employee assisting the City during the transitional period following her termination date. Accordingly, Employee agrees to make herself actively, reasonably, and readily available to assist the City by providing consultation and advice on matters that were previously within the scope of her job duties for a period not to exceed 60 days from the termination date by phone or email as is convenient to Employee. The number of hours that Employee shall be available shall be limited to one hour per business day during the 60 day period.

8. No Admission of Liability. It is specifically understood that by reason of agreeing to the Agreement, the parties hereby released admit absolutely no liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort, and it is further specifically understood that the Agreement shall not be construed as an admission of liability, misconduct, wrongdoing, unethical or unprofessional conduct of any sort on the part of any party.

9. Voluntary and Knowing Action. The parties acknowledge that they have thoroughly read and understand the terms of the Agreement, and that they are voluntarily entering into the Agreement to resolve the matter.

10. Rescission/Revocation. The Agreement is subject to the following rescission/revocation periods as provided by law:

Age Discrimination in Employment Act, 7 days, 29 U.S.C. § 626(f)(1)(G);
Minnesota Human Rights Act, 15 days, Minn. Stat. § 363A.31, subd. 2.

Once the Agreement has been executed, the Employee understands that she has the right to rescind and/or revoke the waivers and releases contained in this Agreement. To be effective, the rescission or revocation must be in writing and delivered to the City either by hand or by mail within the 7-day period for the Age Discrimination in Employment Act, or within the 15-day period for the Minnesota Human Rights Act. If delivered by mail, the rescission or revocation must be:

- (a) postmarked within the applicable 7- or 15-day period;
- (b) properly addressed to the City; and
- (c) sent by certified mail, return receipt requested.

**The City's address is as follows: City Hall
 Attention: City Administrator
 3800 Laverne Avenue North
 Lake Elmo, MN 55042**

11. Complete Agreement. The parties acknowledge and represent that no promise or representation not contained in the Agreement has been made to them.

12. Governing Law. The Agreement will be construed, enforced, and governed in accordance with the laws of the State of Minnesota.

13. Reasons for Agreement. Pursuant to Minn. Stat. § 13.43, subd. 2(a)(6), the City states that the reason it is entering into this settlement agreement is to amicably separate the employment relationship with Employee, and provide her with certain benefits in light of her termination from employment.

IN WITNESS WHEREOF, the City and the Employee have approved and executed the Agreement this _____ day of _____, 2017.

CITY OF LAKE ELMO

EMPLOYEE

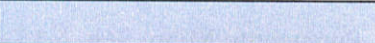




By: _____
 Mayor

Cathy Bendel

By: _____
 City Administrator

Document comparison by Workshare Compare on Tuesday, January 31, 2017
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Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Total changes	14

