
SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Agreement") is entered into by and between David Watkins ("Watkins") and the **City of Bryan** ("City"). Together they are referenced as "the Parties". The Parties agree as follows:

1. Employment Status.

Watkins will remain on paid administrative leave until September 7, 2010, and will remove his personal belongings from his office no later than the close of business on September 8, 2010. The Parties mutually agree to terminate Watkins employment as City Manager effective September 7, 2010. The Parties agree that effective September 8, 2010, Watkins will be employed by the City as a consultant through January 3, 2011, the date of his last severance payment. Watkins will be expected to work out of his home or such other places as he may choose, but only at the written request of the Mayor and City Council, at duties commensurate with his experience. The Parties agree that he will not be working from any location provided by the City of Bryan unless agreed upon between them.

The Parties agree to waive any notice requirements for termination that may be provided in Watkins' October 6, 2006 Agreement for Professional Services and Employment as City Manager (the Contract), the City's charter or elsewhere. Watkins will provide City with a letter of resignation identical to that attached hereto as Exhibit A. Watkins agrees that he will not apply or seek reemployment with City.

2. Separation Payment and Benefits.

(a) **Severance Pay.** The City agrees that Mr. Watkins is entitled to severance pay equal to twelve (12) months annual base salary; twelve (12) months car allowance; twelve (12) months accrued vacation leave (160 hours) and twelve months accrued sick leave (160 hours) and 2 floating holidays (16 hours); and nine (9) months COBRA insurance premium and nine (9) months life insurance premiums for a conversion \$330,000.00 portable term life policy. The Parties agree that the severance pay shall be paid out over a term of months rather than in a lump sum, as set forth below. Amounts to be paid for nine (9) months of COBRA insurance contributions and life insurance conversion will be paid by the City directly to the providers of those policies no later than January 3, 2011.

The Parties agree that, except for federal withholding and payments made directly to insurance providers or TMRS, the severance pay will be paid in increments of 1/12 for the months of October, November and December of 2010 (including continued life and health

insurance benefits provided by the City), with the remaining payment owed to be made on January 3, 2011. In addition to the severance pay, Watkins will be paid his past years accrued vacation leave totaling 576.614 hours and his past years accrued sick leave totaling 311.231 hours as part of his separation payment. This amount will be included in his January 3, 2011 lump sum payment.

The parties agree that the following withholding shall be made from each payment to Watkins: (1) Watkins' portion of TMRS employee's portion; (2) Watkins' portion of Medicare; (3) Watkins' share of Social Security contribution for 2011 payment only; and (4) federal income tax.

Watkins acknowledges and agrees that he shall be responsible for paying his share of TMRS contribution on the severance payment, beginning with the month of October 2010. Watkins also acknowledges and agrees that the City does not owe any severance payment to ICMA for deferred compensation, as such contribution for calendar year 2010 has already been made by the City, and no ICMA deferred compensation contribution shall be owed by the City for the calendar year 2011.

(b) Consideration for Release. As consideration for the General Release contained in this Separation Agreement and General Release, on September 24 and on October 8, 2010, Watkins will be paid his regular compensation as set forth in the Contract for the period from September 8 through 30, 2010. As additional consideration for the General Release contained in this Separation Agreement and General Release, Watkins will be permitted to utilize the registration fee to the 2010 annual International City Managers Association (ICMA) conference, which has already been prepaid by the City. All other expenses, including travel and lodging necessary to attend the ICMA conference shall be paid by Watkins. While attending the ICMA conference, Watkins shall not hold himself out as City Manager of the City of Bryan. As additional consideration for the General Release contained in this Separation Agreement and General Release, the City will provide Watkins with a letter of reference attached to this Agreement as Exhibit B, signed by the Mayor of the City. The Parties further agree that if the City offices are contacted by any third party about Watkins, the City office will refer the contact to Jason Bienski as the sole source of information about Watkins' employment as City Manager, unless subsequently authorized in writing by Watkins.

Watkins agrees that on September 24 and October 8, 2010, he will have been paid in full for any wages earned through September 30, 2010. Watkins acknowledges and agrees that upon his receipt of separation pay, the City does not owe him any other unpaid wages or additional compensation, bonus, benefits, or payments of any nature for services he provided to the City prior to his resignation as City Manager, except as provided in this Agreement. Watkins acknowledges and agrees that, by signing this Agreement and accepting the additional consideration set forth above which is not included in his Employment Agreement, he is receiving pay and benefits to which he would not otherwise be entitled, and which constitute consideration for the release of claims contained in this Agreement. Furthermore, Watkins

agrees that the City provided him all applicable leave as required by Federal and State law and City policy.

3. Release and Waiver and Covenant Not to Sue. By signing this Agreement, Watkins agrees to the following:

(a) **Release and Waiver of Rights.** Watkins irrevocably releases City and its directors, officers, elected officials, agents, employees and representatives, jointly and individually, and all persons acting by, through or with any of them (collectively referred to as the "Releasees"), from any and all claims, complaints, liabilities, damages, causes of action, suits, rights, costs, and expenses (including attorneys' fees) of any nature or kind whatsoever, known or unknown, including but not limited to any claim relating to Watkins' employment with City or to his separation from City employment, which Watkins now has, or which he had at any time prior to the execution of this Agreement, against each, all, or any of the Releasees. The claims waived and discharged include, but are not limited to those arising under the following:

- Title VII of the Civil Rights Act of 1964
- Executive Order 11246
- Equal Pay Act
- Uniformed Services Employment and Reemployment Rights Act
- Civil Rights Act of 1991
- 42 U.S.C. § 1981 (the 1866 Civil Rights Act)
- Americans with Disabilities Act
- Employee Retirement Income Security Act
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Family and Medical Leave Act
- Fair Credit Reporting Act
- Fair Labor Standards Act
- Whistleblower claims
- All laws, including the common laws, of the State of Texas regarding employment-related claims
- Disputed wages, including claims for any back wages or overtime
- Wrongful discharge and/or breach of contract claims
- Claims under the U. S. and Texas Constitutions, and
- Tort claims, including invasion of privacy, defamation, fraud, and infliction of emotional distress.

Watkins does not waive rights or release claims that arise after the date he signs this Agreement or any other right or claim that is not legally waivable.

(b) **Covenant Not to Sue.** Watkins agrees that he will not bring any legal action against the Releasees for any claim that occurred prior to his signing this Agreement; however, this provision does not prohibit Watkins from filing a lawsuit for the sole purpose of enforcing his rights under this Agreement, or from enforcing rights that may arise subsequent to his signing this Agreement.

(c) **Waived and Discharged Claims.** Watkins agrees that if a claim that he has waived or discharged under this Agreement is prosecuted in his name or on his behalf before any court or administrative agency, he waives and agrees not to take any award of money or other damages from such suit. Watkins also agrees that if a claim waived or discharged under this Agreement is prosecuted in his name he will immediately request in writing that the claim on his behalf be withdrawn. Watkins also agrees that he waives on behalf of himself and his attorneys all claims for attorneys' fees and expenses and court costs for any claims waived and discharged under this Agreement.

(d) **ADEA Claims.** The claims waived and discharged and the covenant not to sue in section 3 of this Agreement do not include claims under the Age Discrimination in Employment Act (ADEA); such claims are covered in section 4 below.

4. **Release and Waiver and Covenant Not to Sue Under the ADEA.** By signing this Agreement, Watkins agrees to the following:

(a) **Release and Waiver of Rights.** Watkins irrevocably releases City and the other Releasees, or any of them, from any and all claims, complaints, liabilities, damages, causes of action, suits, rights, costs, and expenses (including attorneys' fees) from any and all age discrimination, harassment and/or retaliation claims under the ADEA.

(b) **Covenant Not to Sue.** Watkins agrees that he will not bring any legal action against the City and the other Releasees for any claim under the ADEA that existed prior to the time he signed this Agreement; however, this provision does not prohibit Watkins from filing a lawsuit for the sole purpose of enforcing his rights under this Agreement, from enforcing or securing any rights that may arise subsequent to his signing this Agreement, or from enforcing or securing any rights provided Watkins under the ADEA that may not be legally waived.

5. **No Existing Complaints or Lawsuits.** Watkins represents that he has not filed a complaint, charge, claim or lawsuit against City or any of the other Releasees with any governmental agency or any court. This Agreement is not and shall not be interpreted as an admission by City or any of the other Releasees that it or they acted improperly in any way with respect to Watkins.

6. **Confidentiality.** The Parties agree to keep the terms of this Agreement confidential and promise not to disclose such terms without the prior written consent of each other except as may

be required by law or the order of a court of appropriate jurisdiction. The City agrees not to make any public comment about the settlement agreement with Watkins except that the following Press Release may be issued: "This City Council did not negotiate nor approve Mr. Watkins' written Employment Agreement. However, the current City Council has agreed to abide by the terms of that Agreement by paying the amount negotiated and agreed to by the previous City Council before Mr. Watkins was employed by the City of Bryan." The City agrees, however, that Watkins may inform his immediate family and also his attorney, accountant and CPA of the existence and terms of this Agreement as required for legal and/or financial planning or advice. The Parties and all Releasees also agree that they will instruct their representatives, agents, employees, servants, friends, and families, as appropriate, to abide by the provisions of this paragraph.

Watkins agrees not to disclose information made confidential by law learned while serving as City Manager, except upon an order of a court of appropriate jurisdiction. Watkins agrees not to make any statements or give any opinions concerning matters of city business learned while serving as City Manager which cast the City in a negative light and if asked to discuss same he will state only that "my agreement with the City does not permit me to discuss City-related matters."

7. **Return of City Property.** Watkins agrees to return to City all documents, files, computers, computer files, diskettes, records, notebooks, data, equipment, credit cards, keys, and all other property belonging to City as well as any copies thereof, exclusive of personal information that pertain to his employment with the City, that Watkins may have in his possession or control. Watkins represents and warrants that he has not kept any copies, electronic or otherwise, of any of City's property subject to his control. All such property must be returned to City on or before September 8, 2010.

8. **Consultation With Attorney.** Watkins acknowledges that the City has advised him to consult with an attorney for advice regarding the effect of this Agreement prior to signing it. Watkins agrees that he fully understands his right to discuss this Agreement with an attorney of his choice (at his expense) and that he has had adequate opportunity to do so.

9. **Understanding of Agreement.** The Parties mutually represent that they have carefully read and fully understand all the provisions of this Agreement, and that they are signing it voluntarily.

10. **Severability.** The provisions of this Agreement are severable, that is, they may be considered separately. If any paragraph is found by a court to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

11. **Choice of Law.** This Agreement and the rights and obligations hereunder will be governed by, and construed and interpreted in all respects in accordance with, the laws of the State of Texas. Venue will be in Brazos County.

12. **Waiver of Breach.** The waiver by either Party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by that Party.

13. **Breach.** The Parties agree that the provisions contained in this Agreement are fair and reasonable. The Parties acknowledge that irreparable injury will result to them in the event of the other's breach of any of the provisions herein. Consequently, in addition to any other rights or remedies available to the Parties for breach of this Agreement, the Parties will be entitled to enforcement by preliminary restraining order and injunction. If an action at law or in equity by either is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to recover from the other their reasonable costs and attorneys' fees in addition to any other relief to which it may be entitled.

14. **Cancellation.** The gross payment paid to Watkins in accordance with paragraph 2 hereof must be immediately returned to City if Watkins takes any action or engages in any conduct in violation of any of the terms or conditions of this Agreement. In addition, before Watkins takes any legal action to challenge the validity or enforceability of this Agreement against him, for any reason, including, without limitation, any claim that Watkins did not knowingly or voluntarily enter into this Agreement, Watkins agrees that he first must repay to City the gross payment he received under paragraph 2 hereof. The parties agree that such cancellation provisions or conditions in this section do not apply to an action by Watkins brought under Section 3(b) or 4(b) of this Agreement

15. **Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties and takes the place of any and all prior agreements or understandings between Watkins and City.

16. **No Reliance.** Watkins acknowledges in executing this Agreement that he is not relying and has not relied on any promise or statement (except those contained in this Agreement) made by any of the Releasees or by the Releasees' attorney with regard to the subject matter or effect of this Agreement or otherwise.

17. **Binding Agreement.** This Agreement is binding on the parties and on their heirs, administrators, representatives, executors, successors and assigns.

18. **NOTICE TO WATKINS** Watkins should thoroughly review and understand this Agreement before signing it. **THIS AGREEMENT INCLUDES A RELEASE AND WAIVER OF LEGAL RIGHTS AND CLAIMS.** Watkins has twenty-one (21) days to consider this Agreement before signing it. If Watkins agrees to the terms and wants to enter into this Agreement, he must sign it in the presence of a notary public and deliver it to the Mayor on or before the 21st day after it was given to him. For a period of seven (7) days after Watkins signs this Agreement, he may revoke it by delivering a written notice of revocation to the Mayor. This Agreement will not become effective or enforceable until this seven-day (7) revocation period has passed, and Watkins has timely signed, properly notarized and returned to the Mayor the Acknowledgment attached hereto as Exhibit C.

David Watkins

Date: _____

[Signature]

City of Bryan

Date: 9/8/2010

By: [Signature]
Jason Bienski, Mayor

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Before me, a Notary Public, on this day personally appeared David Watkins, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of September 2010.

[Signature]
Notary Public Signature

[PERSONALIZED SEAL]



ATTEST:

[Signature]
for Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

[Signature]
Janis K. Hampton, City Attorney

EXHIBIT A

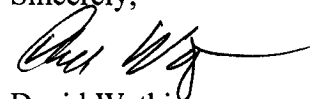
September 7, 2010

Mayor Jason Bienski
City of Bryan

Dear Mr. Bienski:

I am resigning my employment as City Manager with the City of Bryan effective September 7, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "David Watkins", with a long horizontal flourish extending to the right.

David Watkins

EXHIBIT B

Letter of Reference

To whom it may concern:

It is my pleasure to provide a reference for David Watkins, former City Manager of Bryan, Texas. David served Bryan between October 2006 and September 2010. During David Watkins's tenure, the city achieved significant success and many have referred to this period as one of the most successful periods in Bryan's history. David Watkins provided professional leadership by developing a tremendous staff, which has won numerous state and national awards and commendations. Most importantly, David and his staff coordinated the implementation of a joint venture between the Texas A&M Systems Health Science Center (HSC) and the City of Bryan. This project has already led to the construction of two major academic buildings with a third private office building under construction. In addition, the HSC has attracted a major vaccine production facility called Project Greenvacs. These four buildings represent a total outside investment of over \$250,000,000 with over 500,000 square feet of new construction to house these operations. The synergy created by these investments has led to the development of a partnership among Bryan, College Station and Texas A&M to market the area as a biomedical corridor.

Another proud accomplishment during this period has been the continued redevelopment of downtown Bryan. Since 2004, over \$70,000,000 of public investment has been made including a new Justice Center for the City, 1200 vehicle parking garage, infrastructure improvements, and land purchases. This has spurred significant private investment in the area. Downtown Bryan has been awarded numerous awards by the Texas Downtown Association (TDA) and is recognized as one of the top destinations in the Brazos valley. The downtown area is home to the Texas Reds Festival, an annual event celebrating the wine and beef heritage of Texas. This event attracts 30,000 visitors during its two day run.

David Watkins and his staff have created a renewed enthusiasm in the city's minority neighborhoods. Bryan has a large population of low to moderate income families who have endured inferior infrastructure and services for years. The city has installed new sewer lines, replaced undersized water mains, paved miles of streets and constructed new sidewalks, constructed major new roadways, and has created a strong positive relationship between city departments, notably the Police, and these communities.

David Watkins has asked the tough questions about ways to streamline operations and cut duplicative services in all departments. The recession and tight budgets have created awareness of the city council that hard choices have to be made.

Our community, like all others across the country, has faced challenging economic times. Sometimes these situations can create a desire for a change in direction.

We do appreciate the service that David Watkins provided and wish him well in his future endeavors.

Sincerely,

Jason Bienski
Mayor, City of Bryan

EXHIBIT C

ACKNOWLEDGMENT

I, by my signature below, acknowledge that at least seven (7) days have passed since I signed the Separation Agreement and General Release (Agreement) and that during that seven (7) day time period, I did not revoke the Agreement.

I also acknowledge and affirm that since the date I signed the Agreement, I have not filed a complaint, charge, claim or lawsuit against the City or any of the other Releasees (as that term is defined in the Agreement) with any governmental agency, including but not limited to the Equal Employment Opportunity Commission, or any court and that I have no intention of doing so.

I further acknowledge and affirm that since the date I signed the Agreement, to my knowledge neither the City nor any of the other Releasees have acted, have failed to act, or have done anything else that would give rise to any legal claim by me.

To my knowledge I have not disclosed information to third parties outside the City of Bryan organization learned while serving as City Manager which is made confidential by law.

I have read and understand this ACKNOWLEDGMENT and everything in it is true and correct. I am signing this ACKNOWLEDGMENT because I want to assure the City of Bryan that I have not invoked my right to revoke the Agreement and that I have no legal claim against the City and do not intend to pursue any such claim.

David Watkins:

Date: _____

STATE OF TEXAS §

 §
COUNTY OF BRAZOS §

Before me, a Notary Public, on this day personally appeared David Watkins, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____ 2010.

Notary Public Signature

[PERSONALIZED SEAL]