# SEPARATION AGREEMENT AND RELEASE IN FULL

This Separation Agreement and Release in Full (this "Agreement") is made and entered into by and between the City of Charlotte, a North Carolina Municipal Corporation ("City"), and Randall W. Kerrick ("Employee"). This Agreement is effective as of October 2, 2015 ("Effective Date").

# PRELIMINARY STATEMENT

Employee was hired by City on or about March 22, 2010, and has worked most recently as a Charlotte Mecklenburg Police Officer. On September 18, 2013, Employee was suspended without pay. Subsequent to Employee's suspension, the City Manager made a determination, pursuant to a City Council resolution adopted December 12, 1977 and recorded at Resolutions Book 13, pages 141-142, that the City would not defend, or pay for the defense, of a civil lawsuit against Employee.

Employee and City now desire to terminate their employment relationship in a definitive manner and to settle and resolve any and all claims they may have against each other. City, in exchange for the release provided by Employee below, and Employee's agreement with various covenants set forth herein, has agreed to provide Employee with separation benefits that it may not otherwise be legally obligated to provide. This Agreement sets forth the parties' understanding and agreement with respect to such employment separation, post-employment obligations, release of claims, and related matters.

# AGREEMENT

NOW, THEREFORE, in consideration of the agreements and representations hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee and City, intending to be legally bound, hereby agree to the termination of their employment relationship in accordance with terms and conditions hereinafter set forth:

1. Termination from Employment. Employee hereby voluntarily resigns as an employee of the City, and Employee and City confirm Employee's termination from employment with City, effective as of October 2, 2015 (the "Termination Date").
2. No Admission of Liability or Wrongdoing. This Agreement and the payments provided herein do not constitute an admission of any wrongdoing, unlawful conduct or liability by the City.
3. Payments and Benefits Provided by City. City agrees to pay or provide Employee with compensation, benefits and consideration under this Agreement as follows:
	1. Back Pay. City shall pay Employee back pay from the date of Employee's suspension up through and including the Termination Date, payable in one lump sum, gross payment, on October 16, 2015, in accordance with City's generally applicable policies and procedures.

Employee's back pay through the Termination Date is $98,286.44. In addition to back pay, City will pay the following:

 Employer's FICA (paid to Social Security Admin.): 7.65% $7,518.91

 401(k) (paid to Employee's 401(k) account): 5.00% $4,914.32

Employer's Retirement contribution (paid to NC Local Government

 Retirement System) 7.64% $7,509.08

* 1. Vacation Pay. City shall pay to Employee for any accrued, but unused vacation time up through and including the Termination Date, payable in one lump sum, gross payment, on October 16, 2015, in accordance with City's generally applicable policies and procedures.

Employee's accrued vacation leave through the Termination Date is 376.19 hours, for a total payment of $8,795.45. In addition to vacation pay, City will pay the following:

 Employer's FICA (paid to Social Security Admin.): 7.65% $672.85

 401(k) (paid to Employee's 401(k) account): 5.00% $439.77

Employer's Retirement contribution (paid to NC Local Government

 Retirement System) 7.64% $671.97

* 1. Health Insurance. As an employee of City, Employee has been eligible to participate in the City of Charlotte's medical, dental and vision plans, which provides health insurance coverage for participating employees of City and their dependents ("Health Care Coverage"). During the course of Employee's suspension, City has paid the Employer's share and Employee has paid the Employee's share of Health Care Coverage elected by Employee. As such, neither City nor Employee is obligated to make any additional payments, or payments to each other, for health Care Coverage through the Termination Date. Employee may continue Health Care Coverage at Employee's own expense, to the extent (if any) and in the manner provided by the "COBRA" provisions of state and federal law.
	2. 401(k) Plan. As an employee of City, Employee is entitled to 401(k) contribution as set forth above for the time of suspension through the Termination Date, in the amount set forth in section 3(a) and 3(b) above. Employee may also have vested interests in a 401(k) plan or other retirement or deferred compensation plan. Employee's interests in said plans shall be paid when and as provided in, and otherwise subject to, the terms, provisions and conditions of said plans, and nothing in this Agreement shall modify or override those terms, provisions or conditions.
	3. Retirement. As an employee of the City, Employee is a member of the Local Government Retirement System ("System"), and is entitled to have the City make the Employer's Retirement contribution to the System as set forth in sections 3(a)

and 3(b) above. Upon separation from the City, Employee has those rights in his retirement account as are provided by the System.

* 1. Taxes and Withholding. All payments and benefits under this Agreement shall be subject to withholdings for state and federal income taxes, employee FICA withholdings, employee retirement system contributions, and any other amounts required to be so deducted or withheld under applicable law.
	2. Attorney's Fees pursuant to Resolution. Notwithstanding the City Manager's prior determination not to defend, or pay for the defense, of the civil lawsuit filed against Employee pursuant to a City Council resolution adopted December 12, 1977 and recorded at Resolutions Book 13, pages 141-142, the City will pay attorney's fees in association with Employee's civil legal defense, in the amount of $50,630.80. This amount shall be paid to the law firm of Robert D. McDonnell, and shall not constitute wages for purposes of any 401 (k) plan or other retirement or deferred compensation plan.
	3. Additional Consideration. In addition to the consideration represented by the City's payments set forth in sections 3(a), 3(b), and 3(g), which consideration the City may not be legally obligated to provide, the City will pay Employee $500 as consideration for the covenants, agreements, and releases set forth herein and in full satisfaction of all claims Employee has or may have against City by reason of anything done or omitted to be done in relation to Employee's employment with the City. Employee acknowledges that City has no prior legal obligation to furnish Employee with the additional consideration. This payment shall be made on or before October 16, 2015.
1. Release. Employee, on behalf of Employee and Employee's attorneys, attorneys-in-fact, heirs, executors, administrators, next-of-kin, successors, and assigns, does hereby fully waive, release and discharge the Released Parties (as defined below), of and from all debts, sums of money, fees, claims, charges, demands, actions, causes of action, notes, liabilities and obligations, of whatever nature, in law, equity or otherwise (the "Claims"), whether the same be known or unknown, whether the same be liquidated, unliquidated, contingent or otherwise, and whether the same be in contract (express or implied), in tort, or otherwise, which Employee ever had or now has (or hereafter can, shall or may have) with respect to anything done or omitted to be done up through the date Employee signs this Agreement.

The Claims being released include but are not limited to (i) all claims related to Employee's employment with City and the termination of same; (ii) all claims for additional compensation or benefits other than the compensation and benefits specifically set forth in this Agreement, including but not limited to wages, deferred compensation, bonuses, long-term incentive plans, leave periods, or other benefits of any kind; (iii) all claims relating to employment practices or policies of City; (iv) all claims under any express or implied employment contract with Employee which Employee's successors, assigns, or representatives may claim existed with any of the Released Parties; (v) all claims arising under any state or federal labor or employment statutes or common law, including but not limited to: the Family Medical Leave Act; Title VIl of the Civil Rights Act of 1964; the Equal Pay Act; the Family Medical Leave Act; and the Americans with Disabilities Act; (vi) all claims arising under the North Carolina Workers' Compensation Act, as set forth in Chapter 97 of the North Carolina General Statutes; and (vii) all claims related to the arrest of Employee in September 2013.

Employee further represents he has no current or potential workers' compensation claims against the Released Parties. Other than two medical only Workers' Compensation claims (WCCC2011090200 closed 6/8/2011 and WCCC2012094988 closed 4/19/2012), both of which are closed claims, Employee represents he did not suffer any work-related injuries at any time during or as a result of his employment with the City, and that he has not contracted any occupational diseases as a result of his employment by the City. Specifically, Employee expressly denies he has suffered or currently suffers from any emotional or psychological conditions, including but not limited to post-traumatic stress disorder, depression, or any type of anxiety disorder, as a result of or in connection with the September 14, 2013 incident that lead to his suspension, or as a result of or in connection with any other activities or duties he performed for or on behalf of the City. Employee further denies he suffered or currently suffers from any other types of occupational diseases, including but not limited to repetitive motion disorders and exposures to chemicals or any other substances of any type.

Employee represents that other than the above-referenced claims (i.e., WCCC2011090200 and WCCC2012094988), he has not filed any workers' compensation claims against the Released Parties, and that there would be no valid basis for him to do so. Since there is no workers' compensation claim pending before the North Carolina Industrial Commission, Employee's settlement and release of any potential workers' compensation claims is not being submitted to the North Carolina Industrial Commission for approval. Employee agrees that his release of any and all workers' compensation claims and potential workers' compensation claims against the Released Parties is binding upon him and shall have the same binding effect as if approved by the North Carolina Industrial Commission.

In signing this Agreement, Employee acknowledges and intends that the release of Claims set forth in this Section (the "Release") shall be effective to the fullest extent allowed by law as a bar to each and every one of the Claims hereinabove mentioned or implied. If it is determined by a court of competent jurisdiction that any Claim covered by this Release cannot be waived as a matter of law, Employee expressly agrees that the remainder of the Release shall nevertheless remain valid and fully enforceable as to the remaining released claims.

Employee represents and warrants that Employee has not filed any lawsuits, complaints, or charges based on any of the Claims released in this Agreement. Employee represents and warrants that Employee is the sole owner of any and all Claims that Employee may have, and that Employee has not assigned or otherwise transferred Employee's right or interest in any Claim.

For the purpose of this Agreement, "Released Parties" means City, and its present, former, and future elected officials, officers, employees, board members, agents, assigns, insurers, employee benefit plans and programs (and the trustees, administrators, fiduciaries, and insurers of such plans and programs), and attorneys, both individually and in their representative capacities.

1. Knowing and Voluntary Release. Employee has and has had the right to consult with an attorney regarding this Agreement before signing this Agreement and Employee acknowledges that City has advised Employee to consult with an attorney and that Employee has obtained such legal counsel as Employee deems necessary, such that Employee is entering into and signing this Agreement freely, knowingly and voluntarily. A copy of this Agreement was delivered to Employee through his legal counsel, attorney George Laughrun, of the law firm of Goodman, Carr, Laughrun, Levine, and Greene, PLLC.
2. Employee's Acknowledgements and Representations concerning Employment and Absence of Illegal Discrimination. Employee acknowledges and hereby represents to City that Employee believes and on Employee's own free will affirms to City that (a) Employee has no known workplace injuries or occupational diseases; (b) Employee has not suffered any discrimination on account of Employee's age, race, sex, or any other protected characteristic; (c) Employee has not suffered any discrimination as a result of Employee's taking or applying to take any military, family or medical leave, filing a workplace or safety complaint or engaging in any other protected activity; and (d) in Employee's understanding, Employee's protected characteristics and protected activities, if any, have never been a factor in any adverse action taken toward Employee by the City.

Employee warrants and represents that Employee knows of no discrepancy between the hours Employee worked for City and the working hours recorded by City for which Employee has been paid, and hereby acknowledges that with the payment of compensation identified in Sections 2(a) and 2(b) above, Employee has been or will be fully paid for all hours worked for City. Employee has not been asked to work and has not worked any hours or overtime that have been unrecorded or uncompensated by City.

Employee warrants and represents that Employee knows of no illegal activity on the part of City or any instance of City's failure to comply with all applicable federal and state laws and regulations.

Return of City Property. Employee shall promptly return to City all City property that Employee has had in Employee's possession at any time, including, but not limited to, records, documents; tools, credit cards, entry cards, identification cards, identification badges, keys, key fobs, laptop computers, computer software, diskettes, tapes, passwords, personnel data, handheld devices, all equipment issued by City to Employee, and any materials of any kind which contain or embody any proprietary or confidential information of City.

1. Protection of Confidential Information. Employee recognizes and acknowledges that Employee has had access to and has acquired confidential information relating to City and its members. Employee agrees to keep strictly confidential and refrain from disclosing any nonpublic information concerning City and its members that Employee has knowledge or possession of by virtue of Employee's employment. This confidential information also includes, without limitation, all work-related, nonpublic e-mails, notes and documentation; member data; and all other nonpublic information, spreadsheets, and documents pertaining to City. Confidential information shall not include information that is or may become publicly available by no fault of Employee.
2. Attorneys' Fees. Employee agrees to indemnify City for its reasonable attorneys' fees and costs incurred in enforcing the terms of this Agreement should Employee violate any of its terms. 
3. Forfeiture of Benefits. In the event that Employee violates the terms of this Agreement, then Employee shall forfeit and repay any benefit paid to Employee hereunder.

Nothing herein shall be construed as prohibiting City from pursuing any other remedies available to it in the event of any breach or threatened breach, or as a waiver of City's right to seek injunctive relief to enforce this Agreement's covenants.

1. Miscellaneous.
	1. Binding Effect. This Agreement shall be binding upon and inure to the benefit of City. This Agreement shall be binding upon and inure to the benefit of Employee, his heirs, executors and administrators.
	2. Choice of Law. This Agreement shall be construed under and governed by the laws of the State of North Carolina without giving effect to any choice or conflict of law principles of any jurisdiction.
	3. Jurisdiction• Venue. The Parties agree that any litigation arising out of or related to this Agreement or Employee's employment by City shall be brought in any state or federal court in Mecklenburg County, North Carolina. Each party consents to the personal jurisdiction of said courts and waives any venue or inconvenient forum defense to any proceeding maintained in such courts.
	4. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and cancels all prior or contemporaneous oral or written agreements and understandings between them with respect to the subject matter hereof.
	5. No Waiver. No waiver by any party of any breach by any other party of any provision hereof shall be deemed to be a waiver of any other breach hereof or as a waiver of any such or other provision of this Agreement.
	6. Amendment. This Agreement shall not be modified or amended except by a writing executed by the parties hereto, duly authorized as applicable.
	7. Execution in Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.
2. Knowing and Voluntary Agreement. Employee affirms that the only consideration for signing this Agreement are the terms stated above, and that no other promises or agreements of any kind have been made to or with Employee by any other person or entity whatsoever to cause Employee to sign this Agreement. Employee further states that Employee has carefully read the foregoing agreement and release and fully understands the meaning and intent of this instrument, and signs the same of Employee's own free act.

Signatures on Next Page

IN WITNESS WHEREOF, Employee has hereunto set Employee's hand and seal, and the CITY has caused this Agreement to be executed by its duly authorized officer, all as of this day of October, 2015.



Employee Name

 Employee Signature Witness Signature

10/06

Date

City of Charlotte

By: 

Name: 

Title:

Date: