

SEPARATION AGREEMENT AND GENERAL RELEASE

The parties to this **SEPARATION AGREEMENT AND GENERAL RELEASE** (“Agreement”) are **Scott Garrett** (“EMPLOYEE”) and the **Lansing Board of Water and Light** (hereinafter referred to as “BWL,” a term which includes each and every, past and present, BWL commissioner, officer, board member, representative, principal, trustee, employee, independent contractor, partner, manager, director, agent, executive and their successors, assigns, assignors, beneficiaries, servants, legal representatives, insurers, and heirs).

The parties to this Agreement agree and affirm that EMPLOYEE’S last day at work was January 30, 2020; that since that date he has been on paid administrative leave; and that his paid administrative leave and employment with the BWL irrevocably terminates on March 2, 2020. Wishing to put all of EMPLOYEE’S disputes behind them and avoid expenditure of time and money associated with any potential legal proceeding, the parties have negotiated a complete and global resolution of EMPLOYEE’S potential disputes with the BWL, as described below, and agree to enter into this Agreement.

By entering into this Agreement, EMPLOYEE hereby releases and forever discharges BWL from any and all actions, causes of action, claims, demands, liabilities, complaints, charges, damages, costs, and attorney fees arising out of his employment with BWL or the end of that employment, whether in law or in equity, or otherwise, which he had, now has, or may have against BWL, as described further in Section 1 (entitled “General Release”) and Section 2 (entitled “Release of Unknown Claims”) of this Agreement.

1. General Release.

(A). EMPLOYEE acknowledges that he intends to effectuate, and hereby effectuates, with this Agreement the complete waiver, release, and extinguishment of any and all actions, causes of action, claims, demands, liabilities, complaints, charges, damages, costs, and attorney fees that relate in any way to his employment with BWL or the end of that employment, whether in law or in equity, or otherwise, whether based on local law, state law or federal law, whether known or unknown, including but not limited to claims for breach of contract, breach of implied contract, tort, discrimination, harassment, intentional or negligent infliction of emotional distress, tortious interference, retaliation, defamation, negligence, and claims under any federal, state or local law, statute, regulation, or ordinance, including specifically Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Older Workers Benefits Protection Act (OWBPA), the Genetic Information Non-Discrimination Act (GINA), the Employee Retirement Income Security Act (ERISA), the Family and Medical Leave Act (FMLA), the Elliott-Larsen Civil Rights Act, the Persons with Disabilities Civil Rights Act, Michigan’s Worker’s Disability Compensation Act (WDCA) (retaliation), the Whistleblowers’ Protection Act, the Payment of Wages and Fringe Benefits Act, and all other common laws, statutes, regulations, or ordinances, as each such federal, state or local statute, law, regulation, or ordinance may be amended from time to time, which EMPLOYEE has or may have against BWL that arise out of, or result from, or occurred in connection with EMPLOYEE’S employment with BWL and/or EMPLOYEE’S separation from BWL, occurring from the beginning of time to the Effective Date of this Agreement (as defined in Section 14). EMPLOYEE does not waive his right to file a charge or complaint with the EEOC, or similar state or federal regulatory agency or department, on his own behalf or participate in any investigation or proceeding conducted by the such regulatory agency or department.

(B). The parties do not release or waive any right to enforce the terms of this Agreement, any claims that may arise after the Effective Date of this Agreement, or any claims that cannot be waived by operation of law.

(C). With respect to the claims that EMPLOYEE is releasing and waiving, he is releasing and waiving not only his right to recover money or other relief against BWL, either directly or indirectly, but also he is releasing and waiving his right to recover money or other relief in any action that might be brought on his behalf by any other person or entity including, but not limited to, a representative class or collective action or any federal, state, or local governmental agency or department (e.g., the EEOC).

2. **Release of Unknown Claims.** For the purpose of implementing a full and complete release and waiver of claims related in any way to his employment and the end of that employment, EMPLOYEE expressly acknowledges that this Agreement resolves all legal claims related to his employment or the end of that employment that EMPLOYEE may have against BWL as of the Effective Date of this Agreement, including but not limited to claims EMPLOYEE did not know or suspect to exist in EMPLOYEE's favor at the time of the Effective Date of this Agreement. EMPLOYEE hereby assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies described in this Agreement or with regard to any facts that are now unknown to him.

3. **Consideration.** In consideration of the promises contained in this Agreement, which consideration the parties agree is sufficient and adequate, EMPLOYEE and BWL agree that:

(A). BWL will pay EMPLOYEE the total gross sum of Eighty-Six Thousand and 00/100 DOLLARS (\$86,000), inclusive of attorneys' fees and costs, if any ("Separation Sum"). The Separation Sum shall have withheld from it all applicable taxes and withholdings, and shall be paid by single check to "Scott Garrett" or direct deposit in EMPLOYEE'S bank account on file with the BWL, at the BWL's discretion, to serve as compensation for which EMPLOYEE will receive an IRS Form W-2 under applicable tax laws.

(B). BWL will make every reasonable effort to pay the Separation Sum referenced above in subsection 3(A) within 10 business days after the Effective Date of this Agreement.

(C). Employer may, in its sole discretion, pay the cost of outplacement services for Employee, not to exceed Five Thousand and 00/100 DOLLARS (\$5,000.00), for up to twelve (12) months from the date of signing this Agreement.

All payments made to and on behalf of Employee pursuant to this Paragraph will be subject to taxes and withholding, pursuant to applicable law, and Employee understands that Employee will be responsible for Employee's portion of such applicable taxes.

Employee understands and agrees that, other than distributions required by law and payments described in this Agreement, Employee will not be eligible for any payments from Employer. Medical, dental and prescription drug coverage shall cease effective March 31, 2020, except as otherwise provided in this Agreement.

(E). Except for BWL's obligation to withhold taxes from the payment in subsection 3(A), EMPLOYEE shall be solely responsible for any and all required taxes on the payments and benefits described in subsections 3(A); and EMPLOYEE agrees to hold harmless and indemnify BWL for any fine or penalty of any kind imposed against BWL by any taxing authority, including but not limited to the IRS, arising out of the Separation Sum identified in subsection 3(A), except that BWL shall remain responsible for payment of its share of any applicable payroll taxes deemed owed.

(F). EMPLOYEE agrees that the Separation Sum may reduce, eliminate, or be applied against any future unemployment insurance benefits to which he may be entitled, if any. It is

further agreed that the Separation Sum is hereby meant as wage replacement through December 31, 2020, and for purposes of any claim for unemployment insurance benefits, is deemed allocated in equal installments per week through December 31, 2020.

4. **Non-Disparagement.** EMPLOYEE acknowledges and agrees not to engage in any conduct, or make any public statements, written or oral, disparaging or discrediting BWL or any of its current or former employees, directors, managers, or executives or otherwise impair their reputations or commercial interests. For purposes of this agreement, “disparaging or discrediting” shall include providing any negative information, observation, or opinion, by way of any medium to any other person or organization by way of any medium, including but not limited to, social media platforms, online platforms, webpages, web blogs, emails, and press releases; except that EMPLOYEE may make truthful statements to state or federal regulatory agencies or departments in connection with an investigation. Further, EMPLOYEE agrees to direct future employers or prospective employers to BWL’s General Counsel if such employers or prospective employers seek an employment reference from BWL regarding EMPLOYEE’s former employment with BWL. If any person or entity contacts BWL with an inquiry regarding EMPLOYEE’s former employment with BWL, BWL will respond by providing only the title of EMPLOYEE’s position and the dates of employment, unless otherwise necessitated by law or court order. The parties agree that these non-disparagement requirements are a material inducement to entering into this Agreement, and that any breach by any party or his/her immediate family members, attorneys, and/or tax advisors will injure and harm the parties. EMPLOYEE agrees that prior to entering into this Agreement he has not engaged in any conduct that would constitute a breach of this Agreement and further that if he breaches, or it is determined that he has breached, this non-disparagement provision EMPLOYEE shall immediately pay to the BWL \$1,500.00 for each instance of such breach, which the parties agree is an appropriate liquidated damages remedy that does not limit the BWL’s ability to also seek and obtain appropriate injunctive relief.

5. **Non-Admission.** EMPLOYEE acknowledges that the facts and terms of the Agreement are not an admission or concession by BWL of any liability or other wrongdoing under any law.

6. **Representations Regarding Medicare Secondary Payer Act and Indemnification Agreement.**

(A). EMPLOYEE represents and warrants that:

- He is not 65 years of age or older; and
- He has not sought or been awarded Social Security Disability benefits and is not appealing nor plans to appeal any denial of Social Security Disability benefits; and
- He has not sought or been awarded disability benefits from the Railroad Retirement Board and is not appealing nor plans to appeal any denial of such benefits; and
- He is not entitled to Social Security Disability benefits or disability benefits from the Railroad Retirement Board; and
- He does not have end stage renal disease; and
- He does not have amyotrophic lateral sclerosis; and
- He has not received any conditional payments from Medicare; and
- The payments made to him pursuant to Section 3 of this Agreement do not settle or reimburse him for any medical expenses or services for which he could have sought Medicare benefits; and
- There are no Medicare liens or claims applicable to any claims or causes of action he has, had, or may have against BWL.

(B). EMPLOYEE acknowledges, understands, and agrees that, if BWL determines that EMPLOYEE is a Medicare-eligible claimant, BWL may also determine to make an appropriate

report of payments made to EMPLOYEE pursuant to this Agreement to the Centers for Medicare & Medicaid Services.

(C). EMPLOYEE represents and acknowledges that all bills, costs, or liens resulting from or arising out of EMPLOYEE's alleged injuries or claims related in any way to his employment with BWL, if any, are EMPLOYEE's responsibility to pay. EMPLOYEE agrees to fully satisfy any and all rights to payment or recoupment, claims, or liens of any kind that arise from or are related to payments made or services provided to EMPLOYEE or on EMPLOYEE's behalf, or EMPLOYEE's alleged injuries or claims related in any way to his employment, including without limitation, all Medicare conditional payments, subrogation claims, liens, or other rights to payment, including interest thereon, relating to medical treatment, that have or may be asserted by any health care provider, insurer, governmental entity, employer, or other person or entity. EMPLOYEE agrees that, should any governmental entity seek repayment from BWL or file a legal action against BWL for the recoupment of any Medicare payments made to EMPLOYEE or the assessment of any penalties or fines for failure to report information relating to EMPLOYEE to the Centers for Medicare & Medicaid Services, EMPLOYEE will indemnify and hold BWL harmless against all damages, repayments, fines, other penalties.

7. **Provision of All Wages and Benefits Owed to EMPLOYEE.** EMPLOYEE acknowledges and agrees that, upon his receipt of his final paycheck, BWL will have paid to him all wages, remuneration, and other compensation due and owing in accordance with the Fair Labor Standards Act and Michigan law, and that he has been provided all benefits for which he was eligible pursuant to statute, regulation, and/or BWL's policies or practices, including but not limited to all benefits under the FMLA. EMPLOYEE acknowledges and expressly affirms that, other than what is set forth in this Agreement, he is not, and shall not in the future be, eligible for any additional remuneration by reason of his employment with BWL, specifically including any bonus, salary, wages, overtime, expense reimbursement, vacation pay, or other payment(s); insurance coverage or benefits; participation in any employment benefit plan; or issuance of any past, present, or future stock or equity interests.

8. **Additional Representation Regarding Workers' Compensation.** EMPLOYEE represents and warrants that he has not sustained any injuries, diseases, disabilities, or physical, mental, emotional, psychiatric, or psychological conditions of any kind (including, but not limited to, aggravation of any previously existing condition) during or after the time that he worked for BWL that could be compensable pursuant to the Michigan Workers' Disability Compensation Act as part of a workers' compensation claim. EMPLOYEE further acknowledges and agrees that this is a binding factual admission that may bar any claim for workers' compensation benefits for any alleged work-related injury, disease, or disability or post-employment aggravation of the same. EMPLOYEE understands and agrees that this Agreement may be used by BWL in full defense of any workers' compensation claim filed by him, and that any such claim may be subject to a complete offset by the payments and consideration made under this Agreement.

9. **EMPLOYEE Non-Eligibility for Re-Hire:** EMPLOYEE understands and agrees that his work and employment with BWL is irrevocably and forever ended and will not be resumed again at any time in the future (whether as an employee or independent contractor). EMPLOYEE understands and agrees that he is not eligible for hire, employment, or reinstatement with BWL or any entity owned or controlled by BWL in the future (whether as an employee or independent contractor), and EMPLOYEE certifies that he will never seek or apply for work or employment of any kind with BWL or any entity owned or controlled by BWL (whether as an employee or independent contractor). EMPLOYEE agrees that BWL shall have no obligation to consider any such application or request from EMPLOYEE for future employment (whether as an employee or independent contractor) if EMPLOYEE were to seek the same, and BWL's not giving EMPLOYEE any such consideration shall not be considered to be a breach of this Agreement or any violation of EMPLOYEE's rights, and EMPLOYEE waives the same. BWL shall send via mail

EMPLOYEE's personal property that is currently on BWL's premises, if any. EMPLOYEE shall return to BWL any BWL property currently in his possession.

10. **Covenant Not to Sue.** EMPLOYEE agrees and affirms that he is not only waiving and releasing claims, as described elsewhere in this Agreement, but he is also promising not to sue the BWL for any reason. This is called a "covenant not to sue," and is a promise by EMPLOYEE separate from his waiver and release of claims. EMPLOYEE agrees and affirms further that the BWL may rely on this covenant as a further, complete defense to any lawsuit that EMPLOYEE may file against the BWL, and that any such lawsuit must be dismissed with prejudice because of EMPLOYEE'S covenant not to sue.

11. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement will not affect any other provision of this Agreement, which shall remain in full force and effect. Nor will the invalidity, illegality, or unenforceability of a portion of any provision of this Agreement affect the balance of such provision. In the event that any one or more of the provisions contained in this Agreement, or any portion thereof, is held to be invalid, illegal, or unenforceable in any respect, this Agreement shall be reformed, construed, and enforced as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. **Governing Law.** EMPLOYEE and BWL acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without giving effect to conflict of laws rules or statutes. Any suit, action, or proceeding relating to this Agreement shall be brought in the Ingham County Circuit Court (Michigan).

13. **Entire Agreement.** This Agreement represents and contains the entire agreement and understanding between EMPLOYEE and BWL with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written agreements and understandings with respect to the subject matter of this Agreement to the extent that any prior oral or written agreements and understandings differ from the terms of this Agreement, and no representation, warranty, condition, understanding, or agreement of any kind with respect to the subject matter hereof shall be relied upon by EMPLOYEE or BWL unless incorporated herein. This Agreement may not be amended or modified except by an express written agreement signed by EMPLOYEE and a duly authorized representative of BWL.

14. **Voluntary Agreement.** EMPLOYEE and BWL acknowledge, and agree that they are entering into this Agreement of their own free will and volition and without coercion or undue influence.

EMPLOYEE acknowledges that:

- (a) he has received a copy of this Agreement;**
- (b) he has read this Agreement in its entirety;**
- (c) in exchange for waiving his rights and claims, he will be receiving something of value that he was not already entitled to receive;**
- (d) he is hereby advised in writing to consult with an attorney of his choosing prior to executing the Agreement;**
- (e) he is hereby advised that he has a period of at least twenty-one (21) days within which to consider this Agreement; and**
- (f) he is hereby advised that, for a period of seven (7) days following his signing of this Agreement, he may revoke this Agreement for any reason by notifying BWL's General Counsel, Mark Matus, 1201 S. Washington Ave, Lansing, MI 48910, mark.matus@lbwl.com, in writing that he has revoked this Agreement. To be effective, any such written revocation must be received by Mark Matus no later than 12:00 a.m. of the eighth (8th) day following EMPLOYEE's signing of this Agreement.**

EMPLOYEE understands and agrees that this Agreement shall not become effective or enforceable until the seven (7) day revocation period referenced in the preceding paragraph has expired without EMPLOYEE having revoked it ("Effective Date").

15. **Agreement Prepared by All Parties.** Each party has participated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument but all such counterparts shall constitute one Agreement. The seven-day revocation period referenced in Section 14 begins when EMPLOYEE executes this Agreement.

17. **Authority to Execute.** The undersigned agree and affirm that each is authorized to sign this Agreement, and does so freely, without duress or coercion, and with the intent to be bound by its terms.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

THIS IS A RELEASE. READ BEFORE SIGNING.

The undersigned has read this Agreement, understand all of its terms, and sign it voluntarily at this time after the opportunity to consult with counsel of his choosing and with the knowledge that it will affect legal rights and remedies that the parties might otherwise have.

I, Scott Garrett, understand that Section 14 of this Agreement provides me with the time period that the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act require that I be provided to consider whether I want to sign this Agreement. I hereby acknowledge that I have been provided the full amount of time required by law to consider this Agreement, and knowingly and voluntarily choose to sign this Agreement at this time without any inducement or coercion by BWL. I further acknowledge that the seven-day revocation period in Section 14 has not been shortened or waived, and that the seven-day period will commence as of the date of my signing this Agreement.

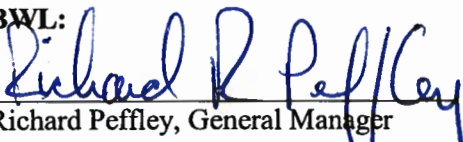
EMPLOYEE:



Scott Garrett

Dated: 3/2/20

BWL:



Richard Peffley, General Manager

Dated: 3/6/20



M. Denise Griffin
Corporate Secretary

Date 3/6/2020

APPROVED


BOARD OF WATER & LIGHT
LEGAL COUNSEL
Date 3/02/2020