

**THIS IS A RELEASE. YOU ARE ADVISED TO READ THIS AND CONSULT
COUNSEL PRIOR TO SIGNING.**

**SEPARATION AGREEMENT, INDEMNITY AGREEMENT
AND RELEASE OF ALL CLAIMS**

This Separation Agreement, Indemnity Agreement and Release of All Claims ("Agreement") is entered into between Anne M. Wagner ("Employee") and the Municipal Employees Retirement System (MERS) of Michigan ("Employer") (Employee and Employer collectively referred to as "the Parties"). The terms of the Agreement are as follows:

1. **Scope and Purpose of Agreement:** In order to settle and compromise any and all claims or disputes Employee has or may have, now or in the future, against Employer or any of the Released Parties identified in Paragraph 6 below, relating to Employee's employment by Employer, her separation from that employment, any events occurring in the course of that employment, and any events occurring prior to the execution of this Agreement, the Parties desire to enter into this Agreement. The Parties intend this to be a private agreement negotiated in good faith, and the consideration provided herein is unique to Employee. It is expressly not the intent of the Parties to create a pattern and practice of severance payments or a severance plan that could be used as precedent or apply to other employees of Employer.

2. **Separation of Employment:**

- A. Employee acknowledges that her employment with Employer will effectively end on June 30, 2012, and that she shall formally retire, effective July 1, 2012. Employee acknowledges that effective May 31, 2012 and ending June 30, 2012, she shall be on a paid administrative leave of absence. Employee acknowledges the paid administrative leave of absence is a benefit to her, in exchange for the promises and covenants set forth herein, that is greater than any benefit to which she would otherwise be entitled.
- B. Employee agrees that, during the paid administrative leave of absence, she shall not be permitted on Employer's premises for any reason; that she shall not perform any work or services of any kind on behalf of or for Employer; and that

she shall not have access to or permission to use Employer's information or communication systems or data.

- C. Employee agrees that she will not in the future apply for, seek or accept employment or work, whether as an employee or independent contractor, with Employer or any of its parent, subsidiary, or affiliated entities, or the customers or clients, including the municipalities or courts for which Employer provides services; and that if in the future she obtains employment in contravention of this Agreement, whether intentionally or unintentionally, this Agreement shall require her immediate resignation or discharge and provide an absolute defense to any claim based upon such discharge.
- D. Employee acknowledges that Employer has paid to her all wages, remuneration and other compensation due and owing in accordance with the Fair Labor Standards Act and Michigan law, and that she has been provided all benefits for which she was eligible pursuant to statute, regulation and/or Employer's policies and/or practices, specifically including unused vacation. Employee acknowledges and expressly affirms that, other than is set forth in this Agreement, she is not, and shall not in the future be, eligible for any additional remuneration by reason of her employment, specifically including any bonus, salary, wages, expense reimbursement, vacation pay, or severance pay; insurance coverage or benefits; participation in any employment benefit plan; or issuance of any past, present or future stock or equity interests.
- E. The Parties acknowledge and agree that Employee shall retain the benefits that shall have vested, as of the effective date of this Agreement, in addition to service accruing through June 30, 2012, pursuant to the terms of any applicable MERS retirement plan, if any, which vested benefits are limited by and subject to the express terms and conditions of the applicable plan and any amendments thereto. Employee specifically acknowledges and agrees that nothing in this Agreement or in this subparagraph (E) modifies or amends any applicable benefits plan, policy, or program, and that any dispute regarding Employee's benefits under any plan, policy or program that is subject to the Employee Retirement Income Security Act ("ERISA") shall be subject to the claims and appeals provisions of such plan, policy or program, as well as the requirements and procedures of ERISA, rather than any provision of this Agreement.

3. **Consideration:** Employee expressly acknowledges that her entry into this Agreement is in exchange for consideration set forth below, which is in addition to anything of value to which she is already entitled.

- A. Employer will pay Employee through Employer's normal payroll schedule her regular rate of pay through June 30, 2012.

- B. On the later of July 1, 2012 or the expiration of the revocation period set forth in Paragraph 16, without Employee revoking this Agreement, Employer shall pay to Employee a one-time lump sum payment equal to \$58,104.39, which represents 90 days of gross pay at Employee's regular rate of pay.
- C. The sums paid under this subparagraphs (A) and (B) shall have subtracted from them tax withholdings as is required by applicable federal, state and/or local statute or regulation, and other required or authorized deductions. These sums are expressly intended to constitute wage replacement for the period starting with the date of the first payment and ending on July 1, 2012, and shall be included in Employee's final average compensation.
- D. Employer shall issue an IRS Form W-2 to reflect the payments referenced in the preceding subparagraphs (A) and (B). Employee shall remain solely responsible for Employee's share of any additional tax obligations arising from payment of these sums. Employee agrees to indemnify and hold Employer harmless from any claims by any federal, state or local taxing authority for taxes, penalties, and/or interest not paid by Employee on these sums.
- E. Employer agrees to permit Employee to voluntarily resign and retire effective July 1, 2012, subject to Paragraph 2 above. Except as may be required by law, Employer agrees that, pursuant to Paragraph 14 below, it will respond to any employer reference requests regarding Employee's employment by disclosing only that she last held the position of Chief Executive Officer and she was employed from August 28, 1996 until June 30, 2012.

4. **Material Representations by Employee:** Employee acknowledges that the following representations are made by her as substantial and material terms of this Agreement, and have been relied upon by Employer in determining whether to enter into this Agreement and to pay the consideration set forth elsewhere in this Agreement. Employee represents that:

- A. She is not aware of any facts or evidence that would support or justify the filing of any administrative charge, complaint or report regarding Employer with any governmental agency, tribunal, office or other entity; or any suit, proceeding, or arbitration demand based upon any of the matters set forth in Paragraph 6. Employee acknowledges that the representation made herein is a material warranty and is of the essence of this Agreement. Employee further acknowledges and expressly affirms that in the event that any governmental agency or entity pursues any action or proceeding to obtain any relief or recovery on her behalf, she agrees that he is not entitled to any remedy, relief or damages of any type whatsoever since all her claims are fully satisfied and extinguished by this Agreement.

- B. She 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 she worked for Employer which 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 would 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 Employer in full defense of any workers' compensation claim filed by her, and that any such claim would be subject to a complete offset by the payments and consideration made under this Agreement.

5. **Acknowledgment and Representations Regarding Medicare Secondary Payer Act:**

- A. This Agreement is based upon a good faith resolution of all disputes, known or unknown, that Employee has or may have with Employer. The Parties affirmatively state that they have not shifted responsibility for medical treatment, if any, to Medicare in contravention of 42 U.S.C. § 1395y(b). The Parties further state that any action or decision, if any, by the Center for Medicare & Medicaid Services regarding this Agreement or Employee's eligibility or entitlement to Medicare or Medicare payments will not render this Agreement void or ineffective, or in any way affect the finality of this Agreement.
- B. Employee is Medicare eligible by reason of the fact that she is age 65 or over. Accordingly, the Parties agree that, notwithstanding any provision as to confidentiality set forth herein, the details of this Agreement, including the identities of Employee and her representatives, if any, personal information about Employee, the payments to be made to Employee, and the date of this Agreement may be reported, if required, to the Centers for Medicare & Medicaid Services as well as to certain agent(s) necessary to facilitate reporting to CMS, pursuant to the terms of Section 111 of the Medicare, Medicaid & SCHIP Extension Act of 2007 (42 U.S.C. § 1395y(b)). Employee acknowledges her duty to cooperate with Employer and the Released Parties in order to allow them to fulfill their obligations, if any and when due, to comply with 42 U.S.C. § 1395y(b).
- C. Employee represents and warrants that she is not aware of any Medicare conditional payments that have been made on Employee's behalf. Employee also represents and warrants that, to the best of her knowledge, Employee has not required and will not require any medical treatment or medication expenses relating to her employment or the separation of her employment with Employer or relating to any known or unknown disputes between the Parties.
- D. Employee represents and acknowledges that all bills, costs or liens resulting from or arising out of Employee's alleged injuries, claims or lawsuit 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, claims or lawsuit, 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 Employer or any Released Party as described in Paragraph 6(A), or file a legal action against Employer or any Released Party 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 Employer and/or any Released Party harmless against all damages, repayments, fines, other penalties, costs, and fees associated with such request or action, including reasonable attorneys' fees and costs of litigation.

6. **Complete and General Release by Employee:**

- A. As used in this Agreement, the term "Released Parties" means Employer and its past, present or future parent, affiliated, related and/or subsidiary companies, corporations, joint ventures and partnerships; and these entities' past, present or future directors, shareholders, Retirement Board(s), Retirement Board members, officers, employees, agents, consultants, insurers, attorneys, partners, accountants and representatives; and any and all benefit plans and health plans maintained or sponsored by Employer or any of its affiliated, related and/or subsidiary companies, and the past, present or future plan sponsors, administrators, fiduciaries, insurers, members of the benefits committee(s), accountants, attorneys, agents, and consultants (hereinafter referred to collectively as the "Released Parties").
- B. For and in consideration of the consideration set forth in Paragraph 3 and the agreements made by Employer herein, the sufficiency of which is hereby acknowledged, Employee, on her own behalf and on behalf of her former, current, or future spouse, heirs, successors, executors, administrators, and assigns, does hereby fully and forever release, waive, and discharge the Released Parties from any and all actions, causes of action, liabilities, claims, debts, benefits and other obligations of any description whatsoever, whether based on common law, local law, state law, or federal law, whether known or unknown, including but not limited to:
- claims for breach of contract, tort, discrimination, harassment, fraud, estoppel, retaliation, whistleblowing, violation of public policy, defamation, tortious interference, breach of fiduciary duty, due process violations, and invasion of privacy;

- claims arising out of Employee's "Employment Agreement" signed by Employee on May 11, 2010, including specifically, but not limited to, any claim for severance pay under paragraphs 4 or 5 of her "Employment Agreement" and/or any claim for "a paid life insurance policy" under paragraph 8 of her "Employment Agreement," her entitlement to which Employee expressly and forever waives; and
- claims under any federal, state or local statute, law, regulation or ordinance, including specifically, but not limited to, the federal Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Family Medical Leave Act, Title VII of the Civil Rights Act of 1964, Michigan's Elliott-Larsen Civil Rights Act, the Persons With Disabilities Civil Rights Act, and the Whistleblower's Protection Act, as each may be amended,

which Employee has or may have against the Released Parties, that arise out of, or result from, or occurred in connection with any thing or matter occurring prior to the date of execution of this Agreement, including without limitation Employee's employment by Employer, her separation from that employment, any events occurring prior to and in the course of that employment, and any other events occurring prior to the date of this Agreement.

- C. Employee acknowledges and expressly agrees that she is releasing and waiving not only her rights to recover money or other relief in any action against the Released Parties, either directly or indirectly, but also she is releasing and waiving any rights she may have to recover money or other relief in any action that might be brought on her behalf (individually or collectively) by any other person or entity including, but not limited to, representative class or collective action plaintiffs or any federal, state or local governmental agency or department.

7. **Indemnification:** Employer agrees that if the Employee is made a party, or is threatened to be made a party, to any action, suit or proceeding (each, a "Proceeding"), by sole reason of the fact that she was the Chief Executive Officer of the Employer or was serving at the request of Employer or any of its subsidiaries as a director, officer, member, or agent of an affiliated entity, and if the basis of such Proceeding is the Employee's alleged action in an official capacity while serving as Chief Executive Officer, or director, officer, member, or agent of an affiliated entity, Employee shall be indemnified and held harmless by the Employer against all costs, expenses, liabilities, judgments, fines, settlement amounts, damages and losses (including reasonable

attorneys' fees) reasonably incurred or suffered by the Employee in connection therewith, except to the extent that any costs, expenses, liabilities, judgments, fines, settlement amounts, damages and losses result from conduct which is alleged or found to constitute fraud or willful misconduct. Employee acknowledges that this indemnification is additional consideration for her entry into this Agreement.

8. **No Admission of Liability:** Employee hereby acknowledges that neither this Agreement nor any statement contained herein shall be deemed to constitute an admission of liability on the part of any of the Released Parties.

9. **Return of Property:** Employee agrees that, at or before the time she executes this Agreement, she has returned or will return to Employer, and shall not take, retain, or copy in any form, whether documentary or electronic, any and all information or materials, including but not limited to records, work papers, intellectual property, training manuals, computer manuals, magnetic media, municipality lists and information, municipality files and correspondence, financial statements, HR/payroll records, email lists and contract addresses, financial information, lists, prices, plans, notes, files, documents, designs, technology, programs and software; and that she has returned or will return as of the date of this Agreement all tangible property, including but not limited to door, desk, office, and other keys, access cards, credit cards, checkbooks, files, beepers, books, phones, tablets, USB drives, removable hard drives, docking station, equipment, publications, parking permit, computers and computer equipment that she has or had in her possession, custody or control.

10. **Confidentiality of Agreement:**

A. Employee: Employee agrees that she will not disclose the terms or existence of this Agreement to any persons other than her spouse, tax preparer, attorney and financial advisor,

and that she will instruct them that they are not to disclose the terms or the existence of this Agreement. Employee acknowledges that the confidentiality of the existence and terms of this Agreement are of the essence and that she will take no voluntary action or inaction which discloses or will reasonably lead to the disclosure of the existence or terms of this Agreement. If Employee is served with legal process which, to her knowledge, requires the disclosure of this Agreement or any of its terms, Employee shall notify Employer in writing, in care of Employer's General Counsel, at least ten business days prior to the planned date of disclosure so that Employer may intervene or otherwise protect its interests if it so desires.

B. Employer: Employer also agrees that it will not disclose the terms of existence of this Agreement to any persons other than Employer's Board of Directors, attorneys, auditors, and certain employees who, in Employer's discretion, require knowledge of and/or access to this Agreement in order to discharge their duties to Employer. Employer also acknowledges that the confidentiality of the existence and terms of this Agreement are of the essence and will take no voluntary action or inaction which discloses or will reasonably lead to the disclosure of the existence or terms of this Agreement unless required by law (including but not limited to the Freedom of Information Act, MCL 15.231, *et seq*) or by court order.

11. **Confidentiality of Employer's Proprietary Information:** Employee acknowledges that as an employee of Employer she has had access to and has been provided knowledge regarding Employer's Proprietary Information, specifically defined to mean any and all information that was developed, created, or discovered by or on behalf of Employer, or which became known by, or was or is conveyed to Employer, which has commercial value in Employer's business, including, without limitation, information about blueprints, software programs and subroutines, trade secrets, designs, technology, know-how, processes, data, ideas, techniques, inventions

(whether patentable or copyrightable or not), works of authorship, formulas, business and product development plans, customer lists, work papers, marketing plans, financial information, prices, terms of compensation and performance levels of Employer's employees and consultants, customers and other information concerning Employer's actual or anticipated business, research or development, or which is received in confidence by or for Employer from any other person or entity. Employee agrees that she will not use or disclose Employer's Proprietary Information to any person or entity without the prior written consent of the Retirement Board Chair on behalf of Employer as to each specific use or disclosure.

12. **Agreement Regarding Employee Communications with Third Parties:** Employee agrees that she will not make oral or written statements regarding Employer or any of the Released Parties that reflect negatively upon them or detract from their reputation and integrity. Employee agrees that she will not initiate any contact or communications with any vendor, customer or distributor of Employer. Employee further agrees that if she is contacted by any representative of an Employer vendor, customer or distributor, Employee will not discuss Employer business or divulge any information regarding Employer or her employment, and will instead refer the individual to the Retirement Board Chair.

13. **Remedies for Irreparable Injury to Employer:** Employee acknowledges that a violation of the terms Paragraphs 10, 11, or 12 may give rise to irreparable injury to Employer inadequately compensable in damages, and accordingly, agrees that Employer may seek injunctive relief against such breach or threatened breach, in addition to any other legal remedies which may be available, including recovery of monetary damages. In any action successfully brought by Employer to enforce the rights of Employer under this Paragraph, Employer shall also be entitled to recover reasonable attorneys' fees and costs of the action.

14. **Employment References:** Employee agrees that she will expressly inform all prospective employers and other persons who wish to confirm her employment that they must contact only the Retirement Board Chair, who agrees to provide only the information set forth in Paragraph 3(E) above.

15. **Twenty-One Day Consideration Period:** Employee agrees that she has an ample and reasonable period of time of up to twenty-one (21) days to review and consider this Agreement, and that any changes to this Agreement which are the result of negotiations between the Parties shall not entitle Employee to any additional review time or waiting period.

16. **Seven-Day Revocation Period:** The Parties agree that for a period of seven days following the execution of this Agreement by Employee, Employee may revoke this Agreement by means of a writing delivered to Employer's General Counsel at:

MERS of Michigan
1134 Municipal Way
Lansing, MI 48917

within such period, and the Agreement shall not become effective or enforceable until the revocation period has expired without Employee having revoked it. To be effective, any such revocation must be in writing and either postmarked within the seven-day period. If revocation is made by mail, mailing by certified mail return receipt requested is recommended to show proof of mailing. Employee understands that by signing this Agreement and by not revoking the Agreement during the seven-day revocation period, Employee will be bound by this Agreement.

17. **Advice to Consult with Counsel:** Employee warrants and represents that she is hereby advised in writing to consult with an attorney of her selection prior to signing this Agreement.

18. **Parties Responsible for Their Own Attorney Fees:** The Parties agree that they shall bear their own attorneys' fees and costs, if any, incurred in creating and executing this Agreement.

19. **Knowing and Voluntary Execution:** Employee warrants and represents that the terms of this Agreement have been completely read and fully understood and voluntarily executed by her.

20. **No Other Persons Eligible to Participate; Indemnity Agreement:** Employee shall not assign her rights or interests under this Agreement. Employee further warrants and represents that she is the only person who is or may be entitled to receive or share in any benefits or compensation on account of or arising out of her employment by Employer, the separation of that employment, any actions taken in the course of that employment, and any events related to Employee's employment or occurring prior to the execution of this Agreement. Employee shall defend, indemnify and hold harmless Employer and/or the Released Parties from and against any claim, including the payment of reasonable attorneys' fees and costs incurred by Employer or the Released Parties based on or in connection with or arising out of any claim or threatened claim made by any other person, including her spouse, or any assignment or transfer made, purported or claimed of any matter released under Paragraph 6.

21. **Release Extends to Unknown Claims and Losses:** Employee expressly understands and agrees that in the event any injury, loss, or damage has been sustained by Employee which is not now known or suspected, or in the event that the losses or damage now known or suspected have present or future consequences not now known or suspected, this Agreement shall nevertheless constitute a full and final release and that this Agreement shall apply to all such unknown or unsuspected injuries, losses, damages, or consequences.

22. **Merger and Integration Clause:** Employee acknowledges and agrees that this Agreement sets forth the entire understanding of the Parties with respect to the subject matter set forth, and supersedes all prior understandings and agreements, whether written or oral, in respect thereof. No covenants, agreements, representations or warranties of any kind whatsoever, whether express or implied in law or fact, have been made by the Parties, except as specifically set forth in this Agreement. No modification or amendment of this Agreement shall be of any force and effect unless in writing and executed by Employee on behalf of herself, and the Retirement Board Chair on behalf of Employer.

23. **Michigan Law:** This Agreement shall be interpreted pursuant to the decisional and statutory law of the State of Michigan, without regard to such State's conflict of laws rules.

24. **Severability of Invalid Provisions:** Should any provision of this Agreement be declared or be determined by any arbitrator or court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

25. **Execution in Counterparts, Photocopies:** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Accurate and true photocopies may be used in lieu of the originals for any purpose.

26. **Agreement Prepared by Both Parties:** Each Party has cooperated 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.

27. **Employee Competency:** Employee represents and acknowledges that she is unaware of any physical or mental limitation which affects her ability to work or to enter into this Agreement.

28. **Authority to Sign:** The undersigned hereby acknowledge and agree that they have authority to sign this Agreement.

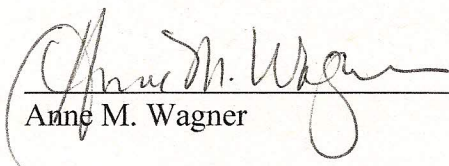
SIGNATURES ON FOLLOWING PAGE

THIS IS A RELEASE

READ BEFORE SIGNING

I, Anne M. Wagner, understand that Paragraph 15 of this Agreement provides me with the time period that the Age Discrimination in Employment Act 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 the Released Parties. I further acknowledge that the seven-day revocation period in Paragraph 16 has not been shortened or waived, and that the seven-day period will commence as of the date of my signing this Agreement.

DATED: June 20, 2012



Anne M. Wagner

DATED: _____, _____

MERS of Michigan

By: Larry Opelt
Retirement Board Chair

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THIS IS A RELEASE

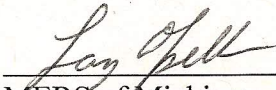
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DATED: _____, _____

Anne M. Wagner

DATED: 6-25-, 2012


MERS of Michigan

By: Larry Opelt
Retirement Board Chair

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