

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT (“Settlement Agreement”) made this 25th day of July, 2015, by and between Martin D. Murphy (hereinafter “Murphy”), whose address is 33 Hudson Street, Oneonta, New York, 13820 and the City of Oneonta (the “City”), whose offices are located at 258 Main Street, Oneonta, New York, 13820, upon execution by the parties.

WHEREAS, Murphy desires to resign from City employment;

WHEREAS, the City and Murphy agree that the parties should sever their employment relationship on the terms and conditions set forth herein and to resolve all issues that have arisen between them;

WHEREAS, the parties engaged in negotiations to resolve all issues related to Murphy’s resignation;

WHEREAS, as a result of those negotiations, the parties have reached a mutually agreeable settlement of all issues relating to Murphy’s employment with the City and his resignation;

WHEREAS, in the interest of avoiding the expense, inconvenience, and uncertainty of any legal proceedings.

1. Consideration. As a material inducement to and in consideration for Murphy entering this Agreement, subject to the terms and conditions of this Agreement, the City agrees to:
 - (a) Waive any and all existing claims against Murphy and further release Murphy to the fullest extent permitted by law from any and all causes of action, suits, damages, claims, proceedings or demands the City may have against Murphy, asserted or unasserted, directly or indirectly, whether known or unknown, arising out of Murphy’s employment with the City, including but not limited to any and all New York Labor Laws; all other federal and state statutes relating to employment and business, and City or municipal laws, rules or regulations relating to employment; or the common law of the State of New York, or any other state, including but not limited to, any and all claims for attorneys’ fees, costs, and/or disbursements; and the City further gives this release on behalf of itself, and its agents and employees.
 - (b) Continue Murphy on the City’s bi-weekly payroll at Murphy’s current salary of one-hundred ten thousand dollars (\$110,000.00) and City’s group health plan making 95% of the contribution prior to the effective date of his resignation and continuing to contribute to the New York State Retirement System on behalf of

Murphy for a period of six (6) months following the effective date of his resignation. Murphy shall thereafter be entitled to his rights under COBRA at the end of the six (6) month period, ending on January 23, 2016.

- ✓ (c) Compensate to Murphy a lump sum payment for all sick, vacation, personal and holiday leave accrued at the date of the signing of this agreement, in the amount of \$5,900.00, which shall be payable on or before July 31, 2015.
- ✓ (d) Provide a neutral employment reference which would include Murphy's dates of employment and the fact that he voluntarily resigned his employment should the City at any time be contacted by a prospective employer.

As a material inducement to and in consideration for the City entering into this Agreement, subject to the terms and conditions of this Agreement, Murphy agrees to:

- (e) Tender his resignation on July 25, 2015 which will be effective July 25, 2015.
- (f) Waive any and all existing claims against the City and further release the City to the fullest extent permitted by law from any and all causes of action, suits, damages, claims, proceedings or demands Murphy may have against the City, asserted or unasserted, directly or indirectly, whether known or unknown, arising out of Murphy's employment with the City, including but not limited to any and all New York Labor Law; all other federal and state statutes relating to employment and business, any city or municipal laws, rules regulations relating to employment; or the common law of the State of New York, or any other state, including, but not limited to, any and all claims for attorneys' fees, costs, and/or disbursements; and Murphy further gives this release on behalf of himself, and his agents, heirs, executors, administrators, successors and assigns.
- (g) Pursuant to Section C-16(E) of the Charter of the City of Oneonta waive his right to a public hearing before the Common Council.

The parties acknowledge that they would not otherwise be entitled to the full consideration described in this Agreement, and that they are accepting such consideration in return for their agreement to be bound by the terms of this Agreement.

2. Non-admission. The parties understand and agree that this Agreement and the consideration exchanged herein is not intended, does not constitute, and shall not be used or construed in any way as an implied or express admission of any sort, including but not limited to an admission of liability or any improper, illegal, or

wrongful conduct, on the part of either party to this Agreement, and both parties expressly deny any such admissions and/or improper or wrongful conduct.

3. Execution. This Settlement Agreement may be executed in two (2) or more counterparts, and execution in such manner shall in no way affect or alter the validity of the Settlement Agreement or the rights and responsibilities of the parties thereto.
4. Breach. Should the City at any time in the future violate the terms of the Settlement Agreement, it will pay any and all amounts that would normally be due and owing under Murphy's September 2014 Employment Agreement had it been breached by the City. In like manner, if Murphy at any time in the future violates the terms of the Settlement Agreement, he shall not receive any payments which might be due under the agreement and shall be entitled only to such amounts due him upon termination for cause under Murphy's September 2014 Employment Agreement.

5. Confidentiality. The parties agree not to voluntarily disclose or publish the terms of this Agreement and to keep it confidential to the extent permitted by law. The Parties further agree that either party may disclose the terms of this Agreement, without violating the terms of this paragraph or any other part of this Agreement: (a) in response to a valid subpoena; (b) in response to a request for disclosure made pursuant to the New York State Freedom of Information Law ("FOIL"); (c) in response to a request by a person or entity that has a legitimate business reason to know the terms of this Agreement (including but not limited to the New York Department of Labor, ERS, IRS, New York State Department of Taxation and Finance or the City of Oneonta's Personnel or Finance Departments); (d) in response to any claim for breach of this Agreement; (e) in response to any claim by a party to this Agreement which is inconsistent with the terms of Agreement, or (f) in response to disclosures or publications about the terms and conditions of this Agreement which are made to or received by a party. Each party agrees to notify the other in the event a request for a copy of this Agreement is made immediately upon receipt of such request and prior to the disclosure of the Agreement.

6. Disparaging Statements. The parties agree not to make any disparaging statement concerning the other party.
7. Non-Admission. Nothing contained in this Agreement, or the fact that the parties have signed this Agreement and exchanged payments and or promises provided in this Agreement, constitutes or shall be construed as an admission of liability and or any wrongdoing whatsoever by the City, or any of its officers, directors or employees.

8. Older Workers Benefit Protection Act - As required by the Older Workers Benefit Protection Act ("OWBPA"), Mr. Martin is hereby advised to consult an attorney before executing this Agreement. He shall have twenty-one (21) calendar days to consider the details of this Agreement (the "Consideration Period"). Further this Agreement is not to be effective or enforceable for seven (7) calendar days after Mr. Martin executes it and he may revoke it during that time (the "Revocation Period"). The effective date of this Agreement shall be the eighth (8th) calendar day after Mr. Martin executes this Agreement (the "Effective Date"), provided he does not revoke the Agreement during the Revocation Period. To revoke, Mr. Martin must deliver personally or by certified mail, return receipt requested, a written notice of revocation to City Clerk Douglas Kendall. This must be done prior to the end of the seventh calendar day after the Effective Date of this Agreement. If the City Clerk does not receive a written revocation by 11:59 p.m., Eastern Standard Time, on the seventh (7th) calendar day following the Effective Date of this Agreement, this Agreement will become fully enforceable at that time. If Mr. Martin does not accept this Agreement within the twenty-one (21) calendar day Consideration Period, or revoke this Agreement during the Revocation Period, this Agreement shall automatically become null and void. Mr. Martin agrees that any modifications, material or immaterial, made to this Agreement do not restart or affect in any manner the original twenty-one (21) calendar day Consideration Period.
9. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the contents of this Agreement and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, on this subject matter. Neither party has been induced to enter into this Agreement by virtue of, and is not relying upon, any representations or warranties not set forth in this Agreement, any other document preceding the execution of this Agreement, or any prior course of dealings between the parties. This Agreement may not be modified or amended except by agreement in writing signed by both parties.
10. Governing Law. This Agreement is made and entered into in the State of New York and shall in all respects be construed, enforced, and governed in accordance with the laws of the State of New York without regard to its conflict of law principals.

IN WITNESS WHEREFORE, Murphy signs his name to indicate his full agreement of the terms of this Agreement. The City has caused this Agreement to be signed in its name by the Acting Mayor, of the City of Oneonta Common Council, who has full authorization to act on its behalf to indicate its full acceptance of the terms of this Agreement.