

RESOLUTION 2013-83

**Resolution accepting the resignation of the City Manager Thomas M. Carroll
and authorizing the Mayor to enter into a Severance Agreement
with Thomas M. Carroll**

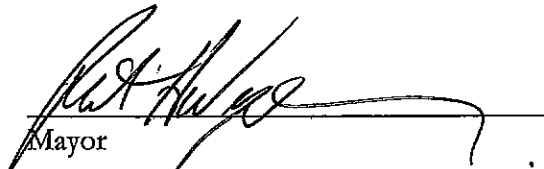
WHEREAS, the Mayor and City Manager have negotiated an agreement whereby the City Manager agrees to resign and City Council agrees to accept his resignation as set forth in the attached Severance Agreement marked Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Loveland, Hamilton, Clermont and Warren Counties, Ohio:


Section 1. That subject to the terms and conditions set forth in the Severance Agreement attached as Exhibit A incorporated by reference herein, Thomas M. Carroll resigns as City Manager and Council accepts his resignation as City Manager; and

Section 2. The Mayor is authorized to sign the attached Severance Agreement (Exhibit A) on behalf of the City of Loveland.

Section 3. This resolution shall take effect from and after the earliest time allowed by law.

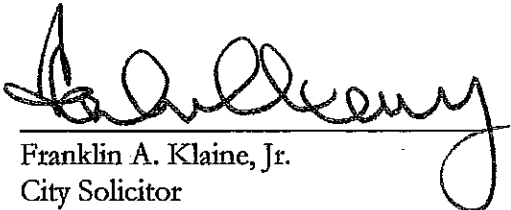


Mayor



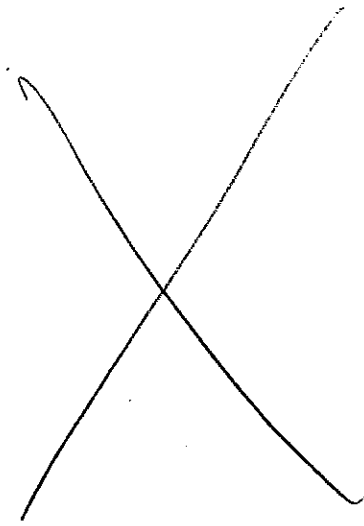
Clerk of Council

APPROVED AS TO FORM:



Franklin A. Klaine, Jr.
City Solicitor

Passed 11-20-13



SEVERANCE AGREEMENT

This Severance Agreement is made and entered into on this ~~20th~~ day of November, 2013 (hereinafter "Effective Date"), by and between the City of Loveland, Hamilton, Clermont and Warren Counties, Ohio, a municipal corporation (hereinafter the "City") and Thomas M. Carroll, the current appointed and acting City Manager of Loveland (hereinafter "Carroll"). The City and Carroll are collectively referred to as the "Parties" to this Agreement.

WHEREAS, City and Carroll entered into an Employment Agreement, originally dated February 14, 2006, as subsequently amended and affirmed in the Amendment to Employment Agreement, dated June 12, 2012 (hereinafter collectively "Employment Agreement");

WHEREAS, the Parties have mutually agreed to terminate the employment relationship, in accordance with Section 3 of the Employment Agreement; and

WHEREAS, the Parties desire to amicably terminate the employment relationship and to settle and resolve any and all outstanding claims and matters between them;

NOW, THEREFORE, in consideration for the payments and mutual covenants, releases, representations, and promises set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree to the following terms and conditions:

1. **Resignation.** Carroll hereby voluntarily resigns his employment as City Manager, pursuant to Section 3 of the Employment Agreement, effective at the end of business on December 4, 2013 provided such resignation is accepted as a part of legislation to approve the terms and conditions of this Severance Agreement (hereinafter "Resignation Date"). From the date of execution and approval of this Severance Agreement, which is anticipated to be November 20, 2013, Carroll shall draw against his accumulated vacation leave and allowable City holidays. Commencing December 5, 2013, Carroll shall for a six (6) month period

("Severance Period") thereafter be employed by the City as a Special Consultant to the City and will provide specific project support and such transition support and information as needed, and as may be expressly requested by the interim or subsequently appointed City Manager, which work shall be consistent with the tasks and professional duties of a senior city Administrator. City shall continue to pay Carroll's normal wages, compensation, and benefits through June 2, 2014 as set forth in his Employment Agreement, all as more specifically detailed in Exhibit A attached hereto. In addition to the compensation and benefits noted above, the City shall continue to contribute its proportionate employer contribution and pension pick-up to OPERS during Carroll's term as Special Consultant.

2. **Severance Payment.**

(a) *Sick Leave and Accrued Vacation Pay.* At the close of the Severance Period, Carroll will be paid an appropriate lump sum (less necessary employment taxes) for ninety-four (94) hours of accumulated vacation leave, consistent with City Policies and Procedures. This balance will be paid at the rate of \$53.47 per hour. Sick leave shall continue to accrue per City Policies and Procedures through the Severance Period and will not be paid out at the close of employment, but shall be portable by Carroll to employment with another public entity as permitted by law. Carroll's current sick leave balance through October 28, 2013 stands at 946.10 hours.

(b) *Lump Sum Severance.* On January 2, 2014, City shall make a lump-sum cash payment to Carroll in the amount of \$46,343.80 being five (5) months' salary as set forth in the aforementioned Amended Employment Agreement at Carroll's current salary rate.

The Severance Payment, continuing health insurance payments per Paragraph 8 and attorney fees as hereinafter set forth are being paid to Carroll in full and final

satisfaction of any and all claims, including but not limited to, the following: (a) any and all claims for wages (other than the compensation and benefits paid under paragraph 1 of this Agreement), (b) any and all severance payments amounts, due under the Employment Agreement or otherwise, and (c) any and all other compensation to which Carroll is entitled or may be entitled. Carroll expressly acknowledges that City shall have no further financial obligations to him upon making such payments as set forth herein. In Carroll's sole discretion, Carroll may direct a portion of this Severance Payment to any deferred compensation plan, as permitted by such plan and/or applicable law.

3. **Employment Records.** City agrees that City shall maintain Carroll's employment personnel file in its current condition and shall not add or include any additional documents, reports, or information in such file after the Effective Date of this Agreement. City shall provide a complete copy of Carroll's employment personnel file to Carroll on or before the Resignation Date.

4. **Return of Property by Carroll.** On or before the Resignation Date, Carroll shall return to City all of City's property, including, but not limited to, keys, files, documents, and all other materials obtained from City or developed during the course of his relationship with City except such documents or records which are public records as defined by R.C. § 149.43.

5. **Positive Recommendation.** City agrees that, in the event that City is contacted in any manner by any current or prospective employer of Carroll, such communication shall be directed to Robert Weisgerber, the City's current Mayor, who shall provide a positive recommendation consistent with the statement attached hereto as Exhibit B. Notwithstanding the foregoing, the City reserves the right to withhold such positive recommendation, in the event that subsequent to the Effective Date Carroll fails to fulfill his obligations under this Agreement.

6. **Joint Press Release.** The Parties shall jointly issue a press release, in the form attached hereto as Exhibit C, during or after the Council Meeting on November 20, 2013.

7. **Health Insurance.** At the conclusion of the six (6) month period ending June 2, 2014, the City agrees to pay the cost of maintaining the medical insurance on Carroll and his family for twelve (12) months thereafter or until Carroll obtains other employment where comparable employer provided medical insurance is available, whichever event occurs first provided that Carroll shall be responsible for any employee portion of such insurance the same as other employees of the City. Comparable employer provided health insurance shall be insurance coverage in comparable amounts, deductibles, co-insurance and employee contributable costs to City's plan. At the close of this extended coverage period, Carroll shall be entitled to continue his health insurance coverage as permitted by law (COBRA) and the City will cooperate to appropriately notify him and administer such conversion.

8. **Attorney Fees.** The City agrees to pay up to Five Thousand Dollars (\$5,000.00) of attorney fees for Carroll with respect to the negotiation and implementation of this Severance Agreement upon the presentation of an itemized bill for services from the attorney for Carroll.

9. **Release by Carroll.** Except as it relates to any claim for a breach of this Severance Agreement, Carroll, on behalf of himself and his heirs, agents, representatives, executors, administrators, successors, and assigns, does hereby fully and forever release, acquit, and discharge City and any of its officers, directors, shareholders, agents, employees, representatives, attorneys, council members, successors and assigns, and any and all other persons or entities acting or purporting to act on City's behalf ("City Agents") from any and all actions, causes of action, damages, claims, and demands of whatsoever kind or nature, known or unknown, arising on account of, out of, and/or in any way related or connected with Carroll's

employment or other relationship with City, including, but not limited to, any and all claims arising under the current version and any and all future amendments of the United States Constitution, the Constitution of the State of Ohio, Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Acts of 1866 and 1871; the Americans with Disabilities Act; Age Discrimination in Employment Act, the Ohio Civil Rights Act; the Employee Retirement Income Security Act, as amended; any and all other federal, state, or other laws relating in any way to employment and/or discrimination; any and all other federal, state, or other laws relating to the denial or termination of any health benefits or benefits of any other kind; any claims of breach of contract, wrongful or retaliatory discharge, negligence, wrongful or bad faith termination, refusal to hire, retaliation, personal injury; any and all other rights to or claims for wages, bonuses, vacation, sick leave, personal time, paid time off, or other compensation; rights to or claims for damages, whether contractual, liquidated, compensatory, or punitive; rights to or claims for injunctive relief; rights to or claims for expenses, costs, attorney's fees; and any and all other claims, losses, or damages of whatsoever kind or nature, including, but not limited to, claims under or relating to public policy. Notwithstanding the foregoing, Carroll does not release his rights to defense and indemnification, pursuant to Sections 2744.01 *et seq.* of the Ohio Revised Code, and under Section 15 of his Employment Agreement, which obligations for indemnification shall survive the termination of his employment and termination of the Employment Agreement, if applicable.

10. **Verification and Acknowledgment by Carroll.** Carroll hereby verifies, agrees, acknowledges, and recognizes the following:

- (a) Carroll shall have no right to obtain or receive any money damages, injunctive, or other relief from City and/or City Agents through any lawsuit, complaint, action, or proceeding commenced or maintained in any court or agency, except in a proceeding to

enforce the rights afforded to him under Sections 2744.01 *et seq.* of the Ohio Revised Code, if applicable.

- (b) All aspects of Carroll's employment as City Manager except his position as Special Consultant with City were terminated as of December 4, 2013, that he will not apply for employment with City or City Agents in the future, and that neither City nor any City Agents have any obligation to reinstate, employ, or hire Carroll, or consider him for reinstatement, employment, hiring, or engagement now or at any time in the future.
- (c) Exclusively as this Agreement pertains to Carroll's release of claims under the Age Discrimination in Employment Act, Carroll, pursuant to and in compliance with rights afforded him under the Older Workers Benefit Protection Act, Carroll hereby acknowledges that he was advised to consult with an attorney before signing this Agreement.
- (d) Carroll represents and warrants that he was offered a period of at least twenty-one (21) days to consider this Agreement; that he has read the Agreement in its entirety and understands the meaning and application of each of its paragraphs; and that he is signing of his own free will with the intent of being fully bound by all of the provisions hereof.
- (e) Exclusively as this Agreement pertains to Carroll's release of claims under the Age Discrimination in Employment Act, Carroll, pursuant to and in compliance with rights afforded him under the Older Workers Benefit Protection Act, Carroll hereby further acknowledges that he has the right, within seven (7) days following execution of this Agreement to revoke his acceptance of the Agreement. If Carroll decides to revoke this Agreement, he must provide written notice of such revocation, within seven calendar days after Carroll signs.
- (f) Carroll represents and warrants that he is signing of his own free will with the intent of being fully bound by all of the provisions of this Agreement, that no promise or inducement has been offered or made to him to enter into this Agreement, and that he is entering into and executing this Agreement without reliance on any statement or representation by City or any person acting on behalf of City.

11. **Non-Disparagement Requirement.** Both parties represent, warrant, and agree that (a) neither party, including current Members of City Council and any elected Members to

City Council, City Administrators, employees and Carroll, shall not make any false, defamatory, or disparaging statements (oral or written) about each other, the City, its officers, directors, employees, or representatives, and (b) Carroll shall not disclose any confidential and/or proprietary information of the City.

12. **Notice of Breach and Opportunity to Cure.** If either party claims the other party to be in breach of any of the obligations or performance responsibilities under this Severance Agreement, then before any action can be taken on such breach, the party claiming breach shall send written notice to the party in breach consistent with Paragraph 18 herein, and such notice shall give the party in breach an opportunity to cure such breach within a reasonable period of time, but no less than fourteen (14) days. If such breach cannot be cured within such period of time, but the party initiates reasonable steps to cure such breach within the time period, then the curative period shall be extended as reasonably necessary to cure such breach. It is the intent of the parties by including this notice provision to work cooperatively to complete the terms and conditions of this Severance Agreement without disruption, and in the event of a disagreement to give adequate opportunity to take corrective action and/or to initiate their Dispute Resolution process so as not to harm the other party.

13. **Breach of Severance Agreement.** It is anticipated that this Severance Agreement and Carroll's resignation as City Manager will be accepted and authorized by the Loveland City Council on or before the Resignation Date. All Parties acknowledge that to implement the terms of the Employment Agreement, as amended, this Severance Agreement and any effective release of employment related claims, that all consideration outlined herein must be paid and/or provided to Carroll. To ensure the effectiveness of this Severance Agreement and to secure the payments and benefits which are outlined herein to Carroll, if at any time before the

conclusion of all payments, or the extended period of time for any benefits, an Initiative or Referendum is initiated, or if action is initiated by City Council of Loveland, Ohio, or action is initiated by the Administration of Loveland, Ohio which would modify or otherwise interrupt or terminate the payment of any or all of the consideration outlined herein, all consideration shall be accelerated and shall be due and payable immediately to Carroll in a lump sum.

Further, should there be any breach of this Severance Agreement by the City, including the failure to pay any accelerated lump sum when due, given the fact that consequential damages may be difficult to ascertain, in addition to any other claim for damages and remedy at law or equity, the City agrees to pay to Carroll as liquidated damages an additional sum of \$500.00 per day from the date of the breach until the breach is cured by payment of any sum of money due or reinstatement of any extended benefits which have been interrupted. The parties agree that there shall be a cap on the amount of liquidated damages payable as a result of any breach. Such cap shall equal the total amount then due under the remainder of the contract so that the cap is reduced with each payment due Carroll or on behalf of Carroll. In addition, Carroll shall be entitled to reimbursement of any and all costs incurred to enforce the terms of this Agreement or to enforce any breach including reasonable attorney's fees separate from the fees authorized in Paragraph 8. Carroll also shall be entitled to interest as allowable by law upon any monetary damages due.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. This Agreement is expressly intended to supersede and replace any and all prior contracts, negotiations, understandings, representations (express or implied), warranties and agreements of any kind or nature made by or between any of the parties hereto, before the Effective Date of this Agreement. Any amendment, modification, or termination of this

Agreement must be in writing and signed by all of the Parties to this Agreement, through a duly authorized agent and/or representative.

15. **Dispute Resolution.** The Parties expressly agree that, prior to resorting to litigation or other legal recourse (except that a Party may file but not prosecute a complaint to preserve the statute of limitations) any disputes between the Parties in connection with their rights and obligations under this Agreement, shall attempt in good faith to be settled without resort to litigation in court. Upon the request of any Party, in writing, the dispute shall first be submitted to mediation for resolution, with the mediator to be chosen by agreement of the Parties. Within thirty (30) days of the date of a Party's written request for mediation, mediation shall be scheduled for a mutually agreeable date in Cincinnati, Hamilton County, Ohio. Each Party shall bear its own attorney fees for the mediation, and shall split any other costs and expenses of the mediation equally. If the Parties are in good faith unable to agree upon the selection of a mediator within thirty (30) days, or unable to have the matter mediated within sixty (60) days of the selection of a mediator, then either Party may terminate the mediation process and the parties.

In the event mediation is unsuccessful and a dispute still exists between the parties, any such dispute shall be submitted to arbitration before the Cincinnati Bar Association Arbitration Service for binding resolution pursuant to its Rules and Procedures in effect at the time the dispute is submitted to arbitration. Unless otherwise awarded by the Arbitrator, the cost of arbitration shall be shared equally by the Parties.

16. **Choice of Law and Forum.** This Agreement shall be governed, interpreted and enforced in accordance with laws of the State of Ohio, and the parties hereby expressly agree and consent to the exclusive jurisdiction of any state court situated in the Village of Batavia,

Clermont County, Ohio, or the U.S. District Court in Cincinnati, Ohio, for resolution of any action, dispute, remedy, and/or declaration and/or determination of rights or remedies under this Agreement that are not able to be resolved by mediation or arbitration. Both Parties consenting to such jurisdiction and forum waive any defense to improper jurisdiction, forum or venue.

17. **Severability and Reformation.** If any provision herein is determined to be unenforceable, the Parties agree that any such provision, or any part thereof, shall be construed consistent with the apparent purpose and intent of the provision to avoid the unenforceability. In the event such construction is not possible, such provision shall be severed, and all remaining provisions shall remain in full force and effect, such to give the parties the benefit of their respective bargains. Provided, however, that if all or any portion of Carroll's release is found to be invalid or unenforceable, Carroll agrees to execute any documents presented by City that would make the release valid and enforceable to the full extent permitted by law.

18. **Notice.** The Parties agree that any and all notices required by this agreement shall be served by certified mail, return receipt requested, to the following addresses:

City of Loveland
Robert Weisgerber
City of Loveland
120 W. Loveland Avenue
Loveland, OH 45140


City Manager
Thomas M. Carroll
446 Pintail Drive
Loveland, Ohio 45140

with an electronic copy to:
Franklin A. Klaine, Jr., Esq.
Strauss Troy Co., LPA
150 East Fourth Street
Cincinnati, OH 45202
faklaine@strausstroy.com

with an electronic copy to:
Terrence M. Donnellon, Esq.
Donnellon Donnellon & Miller
9079 Montgomery Road
Cincinnati, OH 45242
tmd@donnellonlaw.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement with the intent to be legally bound as of the Effective Date set forth above.

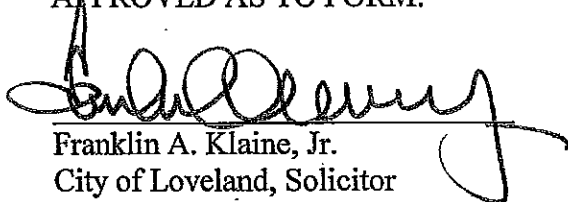
CITY OF LOVELAND

By 
Title MAYOR, CITY OF LOVELAND

CITY MANAGER

By 
Thomas M. Carroll

APPROVED AS TO FORM:


Franklin A. Klaine, Jr.
City of Loveland, Solicitor

severance agreement tom carroll.doc

EXHIBIT A

Salary Compensation as Special Consultant	\$111,225.09 / year *
Vacation Accrual	140 hours per year credited as of January 1, 2014 and prorated to six (6) months
Sick Leave Accrual	10 hours / month
Automobile Allowance	\$300.00 / month
Life Insurance	3 times Annual Salary as noted above terminating June 30, 2014
Health Savings Account	\$6,550.00 paid and deposited on or before January 2, 2014
Longevity Pay	\$1,440.00 paid on or before February 28, 2014
Professional Development	OCMA Conference, February 2014, including registration fees, travel and meals, and 2 nights lodging consistent with City policies but not to exceed the total of \$1,000.00

* Salary is annualized for purposes of computing payroll and is not intended to extend the salary payable for a period of six (6) months as stated in Paragraph 1.

EXHIBIT B

_____, 2013

To Whom It May Concern:

This letter of reference is written on behalf of Thomas M. Carroll, who served as the City Manager of the City of Loveland for over eight years and as Assistant City Manager for four years prior. During his tenure, the City achieved several milestones and noteworthy accomplishments, including the following:

- Mr. Carroll planned, budgeted, designed, bid and constructed transportation improvements totaling \$3.5 million, public utility infrastructure improvements totaling \$7 million, and building construction totaling \$1.2 million.
- While maintaining service levels, as demonstrated by performance data, the City reduced its workforce by 17% from 2010 to 2013. The City also held constant total healthcare costs five of the last six years by creating cutting-edge wellness programs tied to labor contracts and providing employees incentives and tools to reduce healthcare expenditures.
- Mr. Carroll negotiated land sales agreements worth \$10.7 million, labor agreements worth \$15 million in pay and benefits, and complex litigation settlements worth tens of millions of dollars over contract durations.
- Under Mr. Carroll's leadership, the City earned state, national and international recognition for customer input (2005, 2012), effective collaboration (2011), and performance measurements (2009-2012). Recently, Loveland was named the best hometown in Ohio and the second best place to raise a family by state-wide publications.

Due to these and many other accomplishments, Tom had a successful tenure during his term as Loveland City Manager. He served with honor and distinction, and he is missed by his co-workers and residents alike. I highly recommend him in this letter of reference.

Sincerely,

Robert Weisgerber
Mayor

EXHIBIT C

PRESS RELEASE

Loveland's City Manager, Tom Carroll has submitted his resignation on November 20, 2013. Mayor Weisgerber, on behalf of the City of Loveland, wishes to thank Mr. Carroll for his services and all of his efforts and wish him well in his new endeavors. Mr. Carroll was appointed City Manager in 2005, and prior to that he had served as Loveland's Assistant City Manager from 2001 to 2005.

During Mr. Carroll's tenure, the City achieved a number of important milestones, reduced expenditures, and invested in infrastructure. Some of these accomplishments include:

- The City reduced its workforce by 17% from 2010 to 2013 while maintaining service levels as based on performance measurement data. The City also held constant total healthcare costs five of last six years by creating cutting-edge wellness programs tied to labor contracts, and provided employees incentives and tools to reduce healthcare expenditures.
- Mr. Carroll negotiated land sales agreements worth \$10.7 million, labor agreements worth \$15 million in pay and benefits, complex litigation settlements worth tens of millions of dollars over contract durations,
- Mr. Carroll planned, budgeted, designed, bid, and constructed transportation improvements totaling \$3.5 million, public utility infrastructure improvements totaling \$7 million, and building construction totaling \$1.2 million.
- Earned state, national and international recognition for customer input (2005, 2012), effective collaboration (2011), and performance measurements (2009-2012). Recently, Loveland has named the best hometown in Ohio and the second best place to raise a family by state-wide publications.

"When I look back at my service in Loveland and can't believe twelve years have gone by so quickly. I have been fortunate to have worked with so many committee volunteers in the community so that we could together accomplish great things. I also am lucky to have served under this City Council, as well as previous Councils, who through their leadership, have brought great foresight, commitment, and dedication to public service to their elected roles. Lastly, I have great fondness for the hard working employees of the City of Loveland who have always demonstrated their commitment to the Community."

OPTIONAL:

(City Council on _____, 2013 appointed _____ Acting
City Manager)