

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into between C.T. Marhula (“Marhula”) and Michael Herbert and Lois Jenkins (“Herbert & Jenkins”) (collectively “the parties”).

### RECITALS

WHEREAS, the City of Bemidji has a Merit Hearing Board, which exists to review employment decisions taken by any superior officer of the City who has the power to suspend, discharge, or remove from his employment any other employee;

WHEREAS, the City of Bemidji historically did not view the Merit Hearing Board as subject to the Minnesota Open Meeting Law;

WHEREAS, on December 4, 2023, Marhula brought suit in Minnesota District Court, Beltrami County, (*C.T. Marhula vs Michael Herbert, Lois Jenkins*, 04-CV-23-3320) alleging volunteer civil servants and Merit Hearing Board Members Herbert & Jenkins violated Minnesota’s Open Meeting Law concerning a merit hearing;

WHEREAS, on July 8, 2024, the Honorable Annie Claesson-Huseby issued an order denying Defendant Herbert and Jenkins’s Motion for Judgment on the Pleadings, finding there were sufficient facts to support a claim the Merit Hearing Board was subject to the Minnesota Open Meeting Law; and,

WHEREAS, to avoid the significant time, further expense, and uncertainty of litigation, and to put to rest any of the current disputes between the parties, Marhula and Herbert & Jenkins voluntarily enter into this Agreement.

**NOW, THEREFORE, IN CONSIDERATION** of the stipulations, covenants, and the mutual promises contained in this Agreement, including the relinquishment of certain legal rights, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties stipulate and agree as follows:

1. **Stipulation of Dismissal.** The parties hereto, by their signatures below, direct their respective counsel to take any and all necessary steps to cause all of the litigation and claims referenced above to be dismissed with prejudice.

2. **Costs and Attorneys’ Fees.** Each of the parties hereto shall bear all of their own attorney’s fees, costs, and expenses incurred in this litigation.

3. **No Admission of Liability.** Each party herein denies each and every one of the substantive allegations made by the other party, and the signing of this Agreement does not constitute nor shall it be construed as an admission by either party of any

unlawful acts against any other person, or of any liability or wrongful or unlawful conduct whatsoever.

4. **Consideration.** To resolve this matter, the parties agree to the following settlement terms:

- a. Herbert & Jenkins, whether still on the City of Bemidji Merit Hearing Board, or potentially on it in the future, agree to abide by Minnesota's Open Meeting Law and honor requests to hold public meetings of the Merit Hearing Board, under similar circumstances as those which occurred in the merit hearing which was the subject of *C.T. Marhula vs Michael Herbert, Lois Jenkins*, 04-CV-23-33200 (Minn. Dist. Ct., Beltrami County), unless otherwise prohibited by law.
- b. Marhula agrees to voluntarily dismiss the action of *C.T. Marhula vs Michael Herbert, Lois Jenkins*, 04-CV-23-33200 (Minn. Dist. Ct., Beltrami County) upon the City of Bemidji's adoption of a resolution acknowledging Minnesota's Open Meeting Law applies to the City of Bemidji Merit Hearing Board and the parties signing a stipulation of dismissal pursuant to Minn. R. Civ. P. 41.01(a).

5. **Release.** Marhula does hereby fully release, acquit and forever discharge Herbert & Jenkins from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, stemming from the litigation entitled *C.T. Marhula vs Michael Herbert, Lois Jenkins*, 04-CV-23-33200 (Minn. Dist. Ct., Beltrami County).

6. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. The parties intend this agreement as the final and binding expression of their agreement, and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.

7. **Counterparts.** This Agreement may be executed in counterparts and/or by electronic signature, each counterpart of which will be deemed an original, but all of which together will constitute one and the same instrument.

8. **No Prior Assignment.** The parties represent and warrant that they have not assigned or transferred to any third party any of the rights, claims, causes of action, or items to be released as part of this Agreement.

9. **Authority to Execute Agreement.** Each party to this Agreement represents that each such party is authorized to execute this Agreement. Each person executing this

Agreement on behalf of any entity represents that he or she is authorized to execute this Agreement on behalf of said entity.

10. **Advice of Counsel.** Each party hereto, by executing this Agreement, represents to the other party, that each party has reviewed this Agreement with counsel, or has had the opportunity to seek the advice of counsel, and freely, knowingly, and voluntarily enters into this Agreement.

11. **Governing Law.** The parties agree that the laws of the State of Minnesota shall govern the validity, construction and enforceability of this Agreement. The parties agree that the state courts of Minnesota shall have exclusive jurisdiction over any legal proceeding arising out of or related to this Agreement.

12. **Mutual Drafting.** This Agreement is the result of negotiations between the parties and, accordingly, shall not be construed for or against either party, regardless of which party drafted the Agreement or any portion thereof. The Agreement shall for all purposes be deemed to have been mutually drafted.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

C.T. Marhula

Dated: August 20, 2024

By:   
Michael Herbert

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Lois Jenkins

executing this Agreement on behalf of any entity represents that he or she is authorized to execute this Agreement on behalf of said entity.

10. **Advice of Counsel.** Each party hereto, by executing this Agreement, represents to the other party, that each party has reviewed this Agreement with counsel, or has had the opportunity to seek the advice of counsel, and freely, knowingly, and voluntarily enters into this Agreement.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
C.T. Marhula

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Herbert

Dated: 08/20/2024

By: Lois Jenkins  
Lois Jenkins