

SETTLEMENT AGREEMENT, WAIVER AND RELEASE

THIS AGREEMENT is made and is effective as of September ___, 2002, by and between the **CITY OF WAUPUN – POLICE DEPARTMENT** (the “City”), the **WISCONSIN PROFESSIONAL POLICE ASSOCIATION (“WPPA”)** and **MARK COLKER (“Mr. Colker”)**.

WHEREAS, Mr. Colker was a patrol officer employed by the City; and

WHEREAS, the City and Mr. Colker desire, through this Agreement, to settle all claims between the parties related to Mr. Colker’s employment with the City and the termination of that employment relationship; and

WHEREAS, Mr. Colker desires, through this Agreement, to finalize his separation of employment from the City and accept the severance benefits offered by the City under the terms of this Agreement;

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. **Resignation and Records.** Mr. Colker’s termination will be converted into a voluntary resignation as of the date of his original termination. All references to Mr. Colker’s termination will be expunged from his personnel records. A letter of resignation which states that Mr. Colker resigned “to pursue private business interests” will be included in his personnel records in the form provided as Exhibit A to this Agreement.
2. **Severance Payment and Benefits.** In consideration of Mr. Colker’s promises and obligations under this Agreement, the City shall pay Mr. Colker Seven Thousand Dollars (\$7,000) (the “Severance Payment”). The Severance Payment shall be paid to Mr. Colker after he provides the City written notice that he is no longer receiving unemployment insurance benefits. A timely Form 1099 will be issued to Mr. Colker. Mr. Colker agrees to indemnify, defend and hold the City and its employees and officials harmless from any and all federal, state, or local tax or withholding liability arising from or related to the Severance Payment. Mr. Colker further acknowledges and agrees that he is entitled to no further benefit upon execution of this Agreement other than those specifically provided in this provision.
3. **Waiver and Release.** In consideration of the City’s obligations and promises under this Agreement, Mr. Colker does hereby fully and forever discharge and release the City and its past and present officials, employees, agents, representatives, insurers, attorneys, and board members from any and all actions, causes of action, claims, demands, damages (including but not limited to punitive damages), costs, expenses, attorneys fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or to result from Mr. Colker’s employment and/or separation from employment with the City.


By way of example only and without in any way limiting the generality of the foregoing language, Mr. Colker's release shall include all claims for relief or causes of action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2002e, et seq., the Americans With Disabilities Act of 1991, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 791, 793 and 794; the Civil Rights Enforcement Statutes, 42 U.S.C. secs 1981 through 1988; Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001, et seq.; the National Labor Relations Act; 29 U.S.C. sec 151, et seq.; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Wisconsin Fair Employment Laws, § 111.33 et seq., Wis. Stats.; the Wisconsin Family and Medical Leave Act, § 103.10, Wis. Stats.; the Municipal Employee Relations Act, § 111.70 et seq., Wis. Stats.; and any other federal, state or local statute, ordinance, or regulation dealing in any respect with discrimination or termination of employment, and, in addition, from all claims, demands, or actions brought on the basis of alleged wrongful or retaliatory discharge, breach of an oral or written contract, misrepresentation, defamation, interference with contract or intentional or negligent infliction of emotional distress, damage to business or professional reputation, conspiracy, negligence, invasion of privacy, or any other intentional tort or negligence claim or contract claim of any sort under the common law of any state or other jurisdiction.

4. **Effect and Purpose of the Release.** Mr. Colker intends, in executing this Agreement, that it shall be effective as a bar to each and every claim, demand and cause of action described in Section 3. The release set forth in Section 3 is intended for the sole purpose of resolving the issues between the parties concerning Mr. Colker's employment and separation of employment from the City. It is not intended for any other purpose and shall not be used by the parties or any third party for another reason.
5. **Dismissal of Grievance.** In addition, Mr. Colker and the WPPA further agree to immediately dismiss the grievance filed against the City and shall pursue no further grievance, claim or lawsuit against the City regarding the acts or omissions giving rise to his grievance, and that the City and the WPPA are under no obligation to pursue or process such grievance.
6. **Letter of Reference.** The City shall provide Mr. Colker with a mutually agreed upon neutral letter of reference, attached as Exhibit B. Should the City receive any inquiries regarding Mr. Colker's employment with the City from prospective employer(s), the City shall limit its response to Mr. Colker's position, date of hire and resignation, his last rate of pay, and any information consistent with the letter of reference. The City also agrees to maintain a list of the date and name of any such contacts, such list to be available upon request from Mr. Colker.
7. **No Reemployment.** Mr. Colker acknowledges and agrees that he will not be reemployed by the City. If Mr. Colker does seek such employment, Mr. Colker understands and agrees that the City will be under no obligation to process Mr. Colker's application.

8. **Confidentiality.** Subject to limitations of law, the parties agree to keep the existence of and the terms of this Agreement completely confidential. They may share information concerning the Agreement with their representatives, legal counsel and tax advisors to the extent necessary for the purpose of legal or tax advice upon first receiving a promise of confidentiality from those individuals, or for providing information to appropriate governmental agencies as required by law.
9. **Time to Review Agreement.** Mr. Colker acknowledges that he has had sufficient time to read this Agreement and consider his acceptance of this Agreement and voluntarily enters into this Agreement of his own free will with full knowledge of its meaning and consequences and with the specific intention of resolving all outstanding matters pertaining to Mr. Colker's employment and separation from the City. In entering into this Agreement, he is relying on his own judgment and knowledge and not on representations or statements made by the City, its employees, attorneys or agents.
10. **No Admission of Liability.** The parties' participation in this Agreement is not to be construed as an admission of any wrongdoing or liability whatsoever by or on behalf of Mr. Colker, the City, or the City's employees, insurers, attorneys, officials, board members, or agents.
11. **Miscellaneous.** This Agreement shall be construed and enforced in accord with the laws of the State of Wisconsin. It constitutes the entire agreement between the parties as to issues provided for in this Agreement. **If for any reason a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the offending provision will be deemed amended or deleted to the extent necessary to conform to the applicable law. If the waiver and release under Section 3 of this Agreement is found to be illegal or unenforceable by any court of competent jurisdiction, then this Agreement shall become null and void, the City shall have no further obligation to Mr. Colker under this Agreement.** Headings are used for the convenience of the parties only and shall have no affect on the interpretation or validity of this Agreement. This Agreement may be executed in counterparts and shall be as effective as if executed on one document. Facsimile signatures shall be as effective and valid as original signatures.

IN WITNESS THEREFORE, the undersigned further state that they have carefully read the foregoing Agreement, know and understand its contents and sign the same under their own free will, being duly authorized to do so.

11-26-02
Date


Mark Colker

CITY OF WAUPUN

December 3, 2002
Date

By: Robert A. Reing
Mayor

12/3/02
Date

By: Kyle J. Clark
City Clerk

ACKNOWLEDGEMENT OF COLLECTIVE BARGAINING REPRESENTATIVE

The Wisconsin Professional Police Association (the "Union") was the exclusive collective bargaining representative for Mr. Colker while he was employed by the City. The Union consents to the dismissal of the grievance filed against the City by the Union and Mr. Colker for purpose of resolving this settlement and agrees to pursue no further grievance on Mr. Colker's behalf. The Union further acknowledges and consents to the settlement of the above-matter between the City and Mr. Colker on a non-precedential basis. The Union makes no further representation and its participation in this agreement is not an admission of liability of any kind.

**WISCONSIN PROFESSIONAL POLICE
ASSOCIATION**

November 22, 2002
Date

By: John E. McNeill

EXHIBIT A

September __, 2002

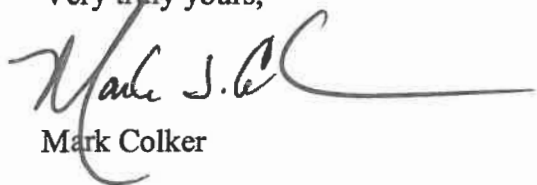
Chief Thomas Winscher
Waupun Police Department

Re: Letter of Resignation

Dear Chief Winscher:

I am writing to inform you that I have decided to resign my position as an officer for the Department of Waupun Police Department as of OCTOBER 07, 2002, as I have the opportunity to pursue private business interests. I am available at any time to complete any necessary paperwork associated with my resignation. Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark S. Colker", with a long horizontal flourish extending to the right.

Mark Colker

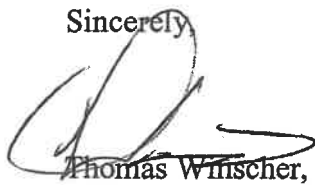
EXHIBIT B

September 25, 2002

To Whom It May Concern:

Mark Colker was a patrol officer under my command from {**hire date**} until {**resignation date**}. Officer Colker's last rate of pay was \$ _____ per hour. Officer Colker resigned to pursue private business interests.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Winscher', written over a horizontal line.

Thomas Winscher,
Police Chief
City of Waupun