

**SEPARATION AGREEMENT
AND GENERAL RELEASE**

This Separation Agreement and General Release ("Agreement") is executed by Vivian Chen ("Chen") and the City of Milwaukee ("City of Milwaukee"), its operations, divisions, subsidiaries, parent corporations, and its predecessors, successors and assigns, its officers, directors, employees, insurers, agents and representatives, (hereinafter collectively referred to as "the City of Milwaukee"). The terms of this Separation Agreement and General Release are as follows:

1. **Separation Date as Health Operations Director**. Chen and the City of Milwaukee have reached an agreement by which Chen will involuntarily separate from her employment (due to the expiration of an exempt appointment) with the City as of 5:00 PM in Milwaukee, WI on May 8, 2008. Chen's last physical day of work will be on February 1, 2008, and she agrees that she will not report to work at any Milwaukee Health Department ("MHD") facility on or after February 2, 2008.
2. **Consideration**. In consideration of Chen's execution of this Agreement and fulfillment of terms herein, the City of Milwaukee hereby agrees to provide Chen with the pay and benefits as set forth in the following subparagraphs:
 - A. **Pension Credit**. Chen will be considered an employee until the separation date of May 8, 2008, and will earn creditable service until that day for pension purposes.
 - B. **Health Coverage**. For purposes of COBRA, the federal law governing the continuation of group health (and dental coverage if applicable), the date of the "qualifying event" shall be May 8, 2008. Chen will then be covered under health

(and dental if applicable) insurance as though a City employee through June 30, 2008, subject to 17 months of COBRA, as provided by City policy and procedure.

C. **Employment Reference.** The City of Milwaukee agrees to provide Chen with an original letter of reference, a template of which is attached as Attachment A, within two weeks of the "Last Revocation Day."

D. **Earned and Unused Vacation Benefits.** It is hereby agreed that the City will apply Chen's earned and unused vacation, sick leave, and four weeks of paid administrative leave from February 1, 2008 to the Separation Date of May 8, 2008, subject to federal, state and local income tax withholding. It is agreed that for all intents and purposes, that Chen will be considered on the payroll and in active service until May 8, 2008.

E. **Limitation.** Chen is to be paid no further wages, expenses, bonuses, costs, fees (including attorney's fees), commissions, benefits compensation or remuneration of any kind, other than those specifically provided herein. The parties warrant that there are no other benefits to which Chen is entitled.

3. **Binding Terms.** In exchange for the Consideration set forth above, Chen and City of Milwaukee specifically agree to the following:

A. **Release of All Claims.** Chen, an adult individual residing in Milwaukee, Wisconsin, for herself, her heirs, personal representatives, executors, administrators, successors, agents and assigns, does hereby release and forever discharge the City of and from any and all manner of action or actions, cause or causes of action, suits, debts, covenants, contracts, agreements, judgments, execution, claims, demands and expenses (including attorneys' fees and costs) whatsoever in law or equity, which she

has had, now has or may have against the City for or by reason of any transaction, matter, cause or thing whatsoever up to the date of this Agreement, whether based on tort, express or implied contract, or any federal, state or local law, statute or regulation, specifically including, but not limited to, any and all claims under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*; the Fair Labor Standards Act of 1938, *as amended*, 29 U.S.C. § 201, *et seq.*; Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 621, *et seq.*, the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. § 1101, *et seq.*; the Federal Rehabilitation Act of 1973, *as amended*, the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990, *as amended*, 42 U.S.C. § 12101, *et seq.*; the Municipal Employment Relations Act, the Federal Occupational Safety and Health Act of 1970, *as amended*, 29 U.S.C. § 651, *et seq.*; 42 U.S.C. § 1981; 42 U.S.C. § 1983; the First or Fourteenth Amendments to the United States Constitution; the Wisconsin Fair Employment Act, and any other applicable statute or authority of law providing a cause of action as to either Chen's employment with the City, separation, discharge, or resignation from the City, any claims which have arisen or could arise out of or are connected with her employment, separation, discharge, or resignation. Chen expressly acknowledges that this agreement is intended to include in its effect, without limitation, all claims which have arisen and of which Chen knows or should have known, had reason to know or suspects to exist in Chen's favor at the time of the execution hereof concerning Chen's employment with the City and that this Settlement Agreement and General Release contemplates the extinguishment of any such claim or claims, consistent with the terms of this Agreement. It is agreed

that this Settlement Agreement does not include the release of claims that may arise after the date that this Agreement is executed. Chen specifically agrees to waive any right to appeal the separation to arbitration or to the City Service Commission, although the parties agree that no such right exists for appointed or exempt individuals.

B. Waiver of Right to Sue. Chen warrants and represents that she has not filed any complaint, charge, claim or grievance against the City of Milwaukee. Chen promises never to file such a complaint, charge, claim or grievance released by subparagraph (A) of paragraph 3 in the future. This Agreement does not prohibit Chen from filing a charge with the EEOC or the ERD or from participating in an investigation or a proceeding with the EEOC or the ERD, but this Separation Agreement and General Release does waive Chen's right to recover anything of value from the City or to be reinstated or re-employed by the City as a result of filing such charge or participating in such investigation or proceeding.

C. Indemnification. Chen understands that the consideration to be paid to her is taxable to her as wages. Chen agrees to pay any and all taxes due and, further, to indemnify the City of Milwaukee for any money they may have to pay to any other person or entity, including any taxing authority, who asserts a claim arising out of or related to the consideration for this settlement. Also, Chen will fully indemnify the City of Milwaukee for any and all expenses, including but not limited to actual attorneys fees, incurred in defending a claim for which this paragraph requires indemnification.

a. **Mutual Return of Property and Cooperation.** Chen agrees that on or by February 1, 2008, that she will return all property, of any nature (including

without limitation, all computers, cell phones, hardware, software, files, applications or information of any kind, and any copies thereof), which she may have in or under her possession or control to the Health Department Personnel Officer. Chen further agrees to cooperate with management by providing any and all information necessary to inform or instruct new or remaining employees in the continued operations or processes associated with her employment.

- b. **Confidentiality of City of Milwaukee Trade Secrets.** Chen agrees that she will neither disclose, divulge, nor communicate to anyone, including co-workers or the media, nor use in any way any trade secrets, membership or vendor lists, confidential records or any other confidential information or knowledge pertaining to the business of City of Milwaukee Health Department obtained by her during her employment with City of Milwaukee. Chen represents that no unreasonable harm to her ability to earn a livelihood will result from this nondisclosure obligation. Chen also acknowledges that breach of this paragraph will result in irreparable and continuing damage to City of Milwaukee for which money damages may not provide adequate relief. Chen, therefore, agrees that breach of this paragraph may entitle City of Milwaukee to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances. Nothing in this paragraph shall be construed to prohibit City of Milwaukee from availing itself of any other remedy and the parties agree that all remedies available to City of Milwaukee are cumulative.

- c. **Mutual Non-Denigration.** In exchange for the agreements and payment called for herein, the parties further agree that they will not now or at any time in the future, make any statements to former, current or prospective employers, state or community agencies, partners, or groups that have associations or relationships with the MHD, clients or their employees or agents, or employees, representatives or vendors of City of Milwaukee which could be construed by a reasonable person as being in any way defamatory toward Chen or the City of Milwaukee, its employees and representatives or the services the City of Milwaukee provides.
- d. **No Admission of Liability.** Neither this Agreement nor any action taken by City of Milwaukee or Chen pursuant to it shall in any way be construed as an admission by City of Milwaukee or Chen of any liability, wrongdoing or violation of law, regulation, contract or policy.

D. Additional Binding Terms:

- a. **Complete Agreement.** The parties understand and agree that this Agreement is final and constitutes the complete and exclusive statement of the terms and conditions of Separation, and that no representations or commitments were made by the parties to induce this Agreement other than as expressly set forth herein.
- b. **Binding Effect.** This Agreement shall be binding upon Chen and upon her heirs, administrators, representatives, executors, successors and assigns and shall inure to the benefit of the City of Milwaukee and its heirs, administrators, representatives, executors, successors and assigns.

- c. **Voluntary Act and Consideration Period.** Chen acknowledges that she has been given a copy of this Agreement with a period of twenty-one (21) calendar days to review and consider it before signing, and that she has had an opportunity to consult with legal counsel before signing it. This Agreement will become null and void if it is not signed within the 21-day period. The signed Agreement must be physically returned to Ms. Maria Monteagudo, Director of the City of Milwaukee Department of Employee Relations, by 5:00 PM on the 21st day at 200 East Wells Street, Suite 706, Milwaukee, Wisconsin, 53211. Chen agrees that any modifications, material or otherwise, to this agreement do not restart or affect in any way the original twenty-one (21) calendar day consideration period. Further, Chen acknowledges that she has carefully read this entire document, that she knows and understands the provisions of the document and that she has signed the document of her own free act and deed. Chen acknowledges that she has been advised to consult with an attorney concerning the contents of this Agreement before signing it.
- d. **Revocation by Chen.** Chen may revoke this Agreement within seven (7) days of signing it. The last day on which this Agreement can be revoked is called the "Last Revocation Day." Revocation can be made by delivering a written notice of revocation to City of Milwaukee as follows: Certified mail, return receipt requested, addressed to Ms. Maria Monteagudo, Director of the City of Milwaukee Department of Employee Relations, 200 East Wells Street, Suite 706, Milwaukee, WI 53202. For this revocation to be effective, it must be delivered to Ms. Monteagudo no later than the Last Revocation Day. If

Chen revokes this Agreement, it shall not be effective and Chen will not receive any Consideration; and her employment will be deemed terminated effective February 1, 2008, with the last day on payroll to be February 8, 2008. If Chen does not revoke this Agreement, it shall go into effect on the day after the Last Revocation Day, and payment and/or delivery of the Consideration shall then commence.

- e. **Headings.** The paragraph headings to this Agreement are for convenience only and shall not be deemed or interpreted to either limit or expand the language used thereunder.
- f. **Severability.** If one or more paragraph(s) of this Agreement shall be ruled unenforceable, City of Milwaukee may elect to enforce the remainder of the Agreement or cancel it.
- g. **Governing Law and Forum.** This Agreement shall be interpreted and construed and enforced in accordance with the laws of the State of Wisconsin, except as preempted by federal law, and before the tribunals of the State of Wisconsin.
- h. **Duplicate Originals.** This document may be executed in duplicate originals.

IN WITNESS WHEREOF, the parties herein executed this Agreement, which consists of ten (10) pages. This agreement was given to Chen on January 25, 2008.

CITY OF MILWAUKEE

DATE:

By:

Title:

Alfonso Montenegro
Employee Relations Dir

Both Parties Must Initial Each Page: mm; VTC;

CAUTION: THIS IS A RELEASE.
CONSULT WITH AN ATTORNEY AND READ IT BEFORE SIGNING.

DATE: 15 Feb 2008

By: Vivian Z. Chen
Dr. Vivian Chen

1084-2008-371/128440v.3

Both Parties Must Initial Each Page: mm; VZ;

Attachment A

(MILWAUKEE HEALTH DEPARTMENT LETTERHEAD)

To Whom It May Concern:

Dr. Vivian Chen was employed by the City of Milwaukee from September 13, 2004 until May 8, 2008 as the Health Operations Director. She provided important insight into public health policy and community-based research issues. Dr. Chen managed the day-to-day operations of the Health Department. In addition, she assisted me with community relations and policy formation. Dr. Chen was dedicated to serving the taxpayers of the City of Milwaukee.

/s/

Bevan K. Baker, FACHE
Commissioner of Health
City of Milwaukee Health Department