

STATE OF MICHIGAN

IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA

DAVID R. WALTERS,

Plaintiff,

v

GRAND HAVEN BOARD OF LIGHT AND
POWER, ANDREA HENDRICK, an individual, and
RYAN CUMMINS, an individual,

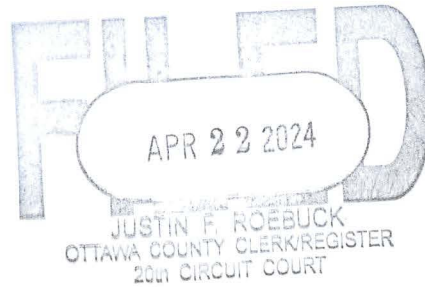
Defendants.

CASE NO. 24 - 7759 -CD

HON. JON HULSING

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

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COMPLAINT AND DEMAND FOR JURY TRIAL

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

NOW COMES Plaintiff, David R. Walters, by and through his attorneys, Smith Haughey Rice & Roegge, and for his Complaint against Defendants Grand Haven Board of Light and Power, Andrea Hendrick, and Ryan Cummins, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff David R. Walters (hereinafter "Mr. Walters") is a resident of Ottawa County, Michigan.

2. Defendant Grand Haven Board of Light and Power (hereinafter the “BLP”) is a non-profit electric utility established by the City of Grand Haven through the Grand Haven City Charter, and located in Ottawa County, Michigan.

3. Upon information and belief, Defendant Andrea Hendrick is an individual residing in Ottawa County, Michigan.

4. Upon information and belief, Defendant Ryan Cummins is an individual residing in Ottawa County, Michigan.

5. This is an action for economic and non-economic damages brought by Plaintiff, David Walters, against Defendants arising out of the actions taken against him as described below. Plaintiff’s damages exceed \$25,000.

6. The events giving rise to this cause of action occurred in Ottawa County, Michigan.

GENERAL ALLEGATIONS

Establishment and Composition of the Grand Haven Board of Light and Power

7. Plaintiff incorporates, as though fully set forth herein, the allegations contained in the preceding paragraphs.

8. Chapter 14 of the Grand Haven City Charter (the “Charter”) is the chapter establishing the BLP.

9. Pursuant to Section 14.1 of the Charter, the BLP’s governance is comprised of five elected members (collectively the “Board”) who are each elected to six-year terms.

10. Section 14.2 of the Charter gives the Board power to appoint a director of light and power (i.e., the General Manager), who serves at the pleasure of the Board.

11. The current members of the Board of the BLP are Michael Westbrook, Mike Welling, Todd Crum, Andrea Hendrick, and Kurt Knoth.

12. The Grand Haven City Council similarly consists of five elected members, one of whom is the Mayor.

13. The current members of the Grand Haven City Council are Bob Monetza (Mayor), Ryan Cummins (Mayor Pro Tem), Michael Fritz, Karen Lowe, and Kevin McLaughlin.

14. On December 19, 2014, Mr. Walters and the Board entered into an employment agreement (the “First Employment Agreement”). (**Exhibit A**, First Employment Agreement).

15. Mr. Walters began his employment as General Manager of the BLP on January 19, 2015.

The Campaign to Eliminate the BLP Begins

16. In fall of 2020, the Grand Haven Energy Organization (“GHEO”), was founded and began actively opposing BLP actions.

17. This group later evolved into the Board of Light and Power Charter Change Coalition (the “Coalition”) in late 2022.

18. Initially, the actions the GHEO was opposing were the implementation of certain remaining elements of the BLP’s Fiscal Year 2017-2021 approved Strategic Plan, and the proposed financing of the plan through the issuance of \$50 million worth of 10-year electric utility revenue bonds.

19. In November of 2021, Michael Westbrook and Andrea Hendrick were elected to the Board with the support of the GHEO.

20. During her campaign to be elected to the Board of the BLP, Hendrick routinely performed functions for the GHEO, and GHEO positions became the centerpiece of her campaign to be elected to the Board.

21. Upon beginning her term as a Board member of the BLP, Ms. Hendrick began to do all she could to discredit the BLP.

22. Upon information and belief, responsive documents to an August 16, 2023, Freedom of Information Act (“FOIA”) request by Mr. Walters establish a pattern whereby Ms. Hendrick would transfer BLP documents from assigned BLP email address to her personal and work email addresses.

23. Ms. Hendrick would then distribute these BLP documents to City Council members and Coalition members in order to facilitate negative discussions of BLP matters and to undermine the Board and Mr. Walters’ efforts to conduct BLP day to day activities and implement strategies.

24. In early 2023, the Coalition began campaigning for a Charter amendment which would abolish the BLP and place the City Council in control of the electric utility department.

25. Under the proposed Charter amendment, the City Manager would replace the BLP General Manager as the City Utility Manager (effectively eliminating Mr. Walters’ position).

26. It has been shown that individual City Council members were a driving force behind the Charter amendment proposed by the Coalition.

27. These individual City Council members raised questions to the City Attorney in July and August 2022 regarding the Charter amendment dealing with the BLP, as reflected by the legal bills from City Attorney Bultje’s law firm, Dickinson Wright, which have been reviewed by Mr. Walters.

The Removal of the BLP’s Appointed Legal Counsel

28. In Spring of 2022, the City Council, at the recommendation of the City Attorney Bultje, made the decision to remove the BLP’s access to the law firm which had long been acting as BLP appointed attorneys for environmental and labor and employment issues, as well as special counsel for electric utility matters.

29. The purported reason for City Attorney Bultje’s recommendation was because Mr. Bultje believed he would be able to adequately represent both the City of Grand Haven and the BLP despite them being separate legal entities and/or governing bodies with different functions and interests, and despite the desire of City Council members to abolish the BLP.

30. Once Dickinson Wright became the sole legal counsel of the City of Grand Haven and the BLP, it became apparent to Mr. Walters that this legal arrangement was untenable.

31. Instead of effectively representing the BLP, Mr. Bultje, at the direction of the City of Grand Haven and Defendants Cummins and Hendrick, as well as others, engaged in unjustifiable behavior intended to undermine the BLP including, but not limited to, the following acts:

- a. Provided legal opinions on BLP matters, including a potential Charter change impacting the BLP, to the City Council and its individual members without providing such opinions to the Board, fueling differences between the governing bodies rather than addressing them;
- b. Provided an opinion, contrary to past City Attorney opinions, requiring that all BLP contracts must be approved by the City Council (neither the City Council nor the BLP implemented this opinion);
- c. Refused to allow the BLP to seek outside counsel when the BLP deemed it appropriate, as had been permitted by past City Attorneys;
- d. Provided an opinion that allowed the City of Grand Haven to sell the Diesel Plant without Board approval after having previously providing an opinion stating the approval of both the BLP and the City of Grand Haven was required in order to sell the plant; and
- e. When providing legal advice on issues where the City of Grand Haven and the BLP were adverse he would provide advice in favor of the City of Grand Haven, which was detrimental to the BLP's interests.

32. Prior to this decision by the City Council, the BLP had been permitted to utilize its own outside legal counsel for decades regarding environmental, labor and employment, and electric utility related matters through previous City Council ratification.

33. Because the City stripped the BLP of its long-standing legal counsel and because City Attorney Bultje worked against, as opposed to for, the BLP, the numerous legal issues raised by Mr. Walters to the BLP failed to be addressed, resulting in the BLP failing to follow the law in some circumstances, including failing to fulfill its contractual obligations as it relates to Mr. Walters.

Mr. Walters 2022 Employment Agreement

34. Due to the desire of the BLP to retain Mr. Walters' services until his retirement, the BLP offered him a new employment agreement in June of 2022.

35. On June 23, 2022, Mr. Walters and the BLP entered into a new employment agreement (the "Second Employment Agreement") which was to run until Mr. Walters' expected retirement on December 31, 2026. (**Exhibit B**, Second Employment Agreement).

36. The only then BLP Board member who voted in opposition to the Second Employment Agreement was Defendant Hendrick.

37. Pursuant to the Second Employment Agreement, Mr. Walters was employed by the BLP as "its General Manager to perform the functions and duties of General Manager in a competent and professional manner, at the direction of the BLP and in accordance with the Grand Haven City Charter and Code of Ordinances, BLP policies and procedures, applicable state and federal laws, rules, regulations, orders, directives, and resolutions of any agency or entity of competent jurisdiction." (**Exhibit B**, Second Employment Agreement).

38. The Second Employment Agreement provides that the BLP would pay Plaintiff a salary of \$221,500 per year, and that this salary had the potential to be increased on an annual basis based upon the annual performance evaluation required by Section 7 of the Second Employment Agreement.

39. The Second Employment Agreement provides that Plaintiff is to receive from the BLP as fringe benefits 5.6 weeks of vacation each year, use of a BLP-owned vehicle for both business and personal use, and retiree benefits upon his eventual retirement.

40. Section 7 of the Second Employment Agreement sets forth the contractual obligations of the BLP to review and evaluate Mr. Walters' performance "at least once annually at the end of each fiscal year." (**Exhibit B**, Second Employment Agreement).

41. The review provided for in Section 7 of the Second Employment Agreement “shall be in accordance with specific performance goals and similar criteria developed jointly by the BLP and Mr. Walters.” (**Exhibit B**, Second Employment Agreement).

42. Plaintiff’s termination (or “retirement” as it is called in the Second Employment Agreement) is governed by Section 10 of the Second Employment Agreement which sets forth the four different sets of circumstances directing how Plaintiff’s “retirement” may occur, as Mr. Walters had become vested.

The City Attorney Refuses to End the Problematic Dual Representation

43. At the August 3, 2022, meeting of the BLP Board, the Board passed a resolution calling for a written agreement between the City Council and BLP to clarify “the roles, responsibilities, and funding obligations for the jointly governed [Harbor Island] project, now led and controlled directly by the City Council and other appointed administrative officers of the City[.]” (**Exhibit C**, 8-3-2022 Meeting Minutes).

44. At the August 3, 2022, BLP Board meeting, the Board also passed a resolution calling for the reappointment of their former special legal counsel for electric utility matters.

45. In response, the Grand Haven City Council approved a resolution on August 15, 2022, which had the effect of negating the BLP’s August 3 resolution to have Varnum reinstated as special counsel to the BLP for electric utility matters.

46. There were letters sent to the City Attorney by Mr. Walters and the elected BLP board members requesting he reconsider the appointment of Varnum as special counsel to the BLP, but Mr. Bultje quickly denied the requests. (**Exhibit D**, BLP Letter to Bultje, & **Exhibit E**, Walters Letter to Bultje).

47. The reason Mr. Walters and the BLP Board each sent City Attorney Bultje letters was due to it being clear to all involved that City Attorney Bultje was not meeting the BLP's needs, and because a majority of the City Council desired to abolish the BLP.

Mr. Walters Brings His Whistleblower Claims to the BLP

48. Mr. Walters has been raising various contractual and legal concerns to the BLP and City Attorney since January of 2022.

49. Mr. Walters first raised his claims to Steve Girard, who is the former labor and employment counsel for both the City of Grand Haven and BLP, before Mr. Girard removed himself from further representation of the City of Grand Haven and the BLP due to his personal ethical concerns related to dual representation.

50. Mr. Walters also raised these claims in numerous emails between himself and the leadership of the Board, as well as in emails to the BLP HR administrator.

51. On June 7, 2023, Mr. Walters had a closed session performance appraisal where he raised, once again, contract and legal concerns/claims to the Board which he believed were violations of law.

(Exhibit F, Renewed Contract and Legal Concerns).

52. Mr. Walters' contract and legal claims raised on June 7, 2023, include:

- a. The BLP and its individual members were not acting in accordance with the City Charter, the BLP's by-laws, state and federal laws, and other regulations, orders, as was required in Section 1 of the Second Employment Agreement.
- b. The BLP was not conducting annual performance evaluations of the General Manager as required by Section 7 of the Second Employment Agreement. Instead, individual BLP board members had informally evaluated the General Manager through making derogatory public comments about him.
- c. The BLP failed to implement a long-standing strategic goal agreed to by the BLP and General Manager to conduct a board self-evaluation, as well as establish a board development plan to address certain governance deficiencies.

- d. The BLP and/or some of its individual members had publicly alleged (unsubstantiated) misconduct by the General Manager which would subject the General Manager to termination of the Second Employment Agreement under section 10(B).
- e. That local public officials, including City Council Members and BLP board members, were working to discredit, criticize, and disparage senior BLP management officials. And that these same officials also worked to mislead the public on the successful accomplishments of the BLP and its staff as a whole.
- f. That the City Council's denial of BLP requested alternative legal counsel was a serious impediment to achieving BLP objectives and addressing large utility issues facing the community.
- g. That individual BLP board members had publicly acted contrary to approved actions of the BLP.
- h. That individual BLP board members, City Council members, the City Manager, and the City Attorney, publicly made inaccurate and verifiably false statements regarding the BLP's environmental compliance activities on the Sims site.
- i. That the board had not appropriately concluded the BLP's non-discrimination and non-harassment internal investigation which was conducted due to claims brought by a local citizen and a BLP board member.
- j. That the proposed charter change (which subsequently failed) had the effect of being an act of the BLP to facilitate the early retirement of the General Manager in a manner not covered by the Second Employment Agreement's terms because his position would have been eliminated and the new position, director of energy services, would have been filled by the City Manager. (**Exhibit F**, Renewed Contract and Legal Concerns).

53. Mr. Walters appropriately raised these claims to the Board pursuant to the Whistleblowers' Protection Act.

54. Despite raising his valid concerns to the BLP on multiple occasions, the BLP refused to engage legal counsel to thoroughly investigate any of Mr. Walters' claims.

55. In July of 2023, the newly-appointed BLP Human Resources Manager expressed her concern to Mr. Walters that neither previous human resource staff nor the BLP board had adequately addressed his legal concerns.

56. After this discussion with Mr. Walters, the new Human Resources Manager was able to convince the BLP Board Chair to allow the American Society of Employers (“ASE”) to review some of Mr. Walters’ legal claims that had been previously dismissed by the City Attorney.

57. The scope of the ASE investigation was very narrow, and **only** addressed Mr. Walters’ equal employment opportunity claims regarding age discrimination and harassment.

58. Accordingly, the ASE investigation did not address any of Mr. Walters breach of contract claims or suspected violations of the law he raised to the BLP Board.

59. The ASE investigation concluded that Mr. Walters’ claims were premature since as of that time, he had not yet been harmed (i.e., had not had an adverse employment action taken against him, such as being terminated).

60. But again, after learning of Mr. Walters’ claims, City Attorney Bultje refused to investigate, or take any legal action, to address Mr. Walters’ concerns.

61. The ASE investigation concluded in August of 2023, and the report the ASE provided was dated as being prepared in early September of 2023.

62. In order to add context to the ASE investigation, Mr. Walters submitted Freedom of Information Act (“FOIA”) requests to both the BLP and the City of Grand Haven on August 16, 2023. (**Exhibit G**, August 2023 FOIA Request).

63. Mr. Walters’ August 2023 FOIA request was for the following information:

E-mail and text correspondence to or from personal and/or GHBLP e-mail addresses and cell phones of **GHBLP Board Member Andrea Hendrick** mentioning, discussing, or addressing in any way **GHBLP employee David Walters** by name (Dave or David) or by position (General Manager, GM, or Director of Light and Power) **with Grand Haven Council Members** including Ryan Cummins, Kevin McLaughlin, and/or Karen Lowe **and/or GHEO/BLPCCC group members** including John Field Reichardt, Dennis Craun, John Nasser, Jeff Miller, David Mann, Steve Miller, and/or Jon Jellema **and/or reporters, writers, columnists, and/or submitters of “your views” in the Grand Haven Tribune** including Karalea Davis, Brendon Thomas, Jared Cramer, and/or Elizabeth Pell, **since taking office as a Board Member in November, 2021.**

(Exhibit G, August 2023 FOIA Request).

64. Although Mr. Walters submitted this FOIA request in August of 2023 it was not fully responded to until March 1, 2024, long after the ASE investigation had concluded.

The September 2023 Whistleblower Investigation

65. By the time of the fall 2023 election season came around, the Coalition (with the support of certain individual Board and City Council members) was fervently campaigning for the Charter amendment to eliminate the BLP.

66. On September 18, 2023, less than 60 days before the election, the City Council approved a resolution to permit an independent investigation into whistleblower claims made by a confidential BLP employee (the “Whistleblower”).

67. Multiple City Council members had known ties to, and showed outward support for, the Coalition.

68. The Whistleblower investigation initiated just 60 days prior to the election was clearly politically motivated, and was a transparent attempt to persuade voters that the BLP was troublesome and should be eliminated.

69. The Whistleblower, rather than follow the BLP employment policies as established in the handbook, which would have required raising the concerns to the Board, instead solely contacted

Defendant Hendrick through an anonymous email account. Defendant Hendrick then gave the Whistleblower the contact information for her personal attorney, Sarah Howard.

70. Further, the Whistleblower stated their concerns originated in September of 2022, but they did not raise these concerns with any Board members until bringing the issue to Defendant Hendrick anonymously in 2023.

71. The Whistleblower provided the independent law firm retained to conduct the Whistleblower investigation with over 221,000 emails. (62,987 of which were Mr. Walters) (**Exhibit H**, Foster Swift Report).

72. The Whistleblower alleged misconduct by the BLP related to the following claims:

- a. After receiving a Freedom of Information Act (“FOIA”) request, the BLP coordinated an attempt to delete email records related to the request;
- b. The BLP considered and decided to pursue the permanent deletion of documents and email records to avoid disclosure per FOIA;
- c. The BLP has repeated false and misleading statements to its employees regarding a proposed charter amendment;
- d. The BLP has at least attempted to avoid compliance with the requirements of the Open Meetings Act;
- e. The BLP has pressured employees to sign a letter, to contribute funds, and to distribute door signs, all opposed to the proposed Charter amendment[.] (**Exhibit H**, Foster Swift Report).

73. Just two days after the resolution was passed, City Council member Ryan Cummins posted an outwardly accusatory Facebook post regarding the whistleblower investigation into the BLP.



Ryan Cummins - Grand Haven City Council Member

September 20, 2023 · 🌐



Whistleblower Allegations and Response

On September 5, the City Attorney notified the City Council of whistleblower allegations concerning the BLP. The City Attorney advised Council these may be violations of both civil and criminal laws.

On September 14, the City Attorney met with the whistleblower and their attorney for two and a half hours to assess the validity of the allegations. The whistleblower was able to provide the City Attorney with specific details and information about the allegations. The whistleblower also turned over 200,000 e-mails and pointed to 6,000 e-mail records as supporting their allegations.

Following the meeting with the whistleblower, the City Attorney advised Council Member Lowe and myself of his assessment. He also advised the Council of the same and that he was comfortable with a proposed resolution for an independent investigation into the whistleblower allegations.

On Monday, Council Member Lowe and I asked the Council to consider an independent investigation. Here are my reasons for asking for this:

- These allegations involve both members of management and some members of the BLP board.
- Considering who may be involved, and the dynamics of the Council/BLP relationship, I felt an independent investigation was best to take the Council, BLP, and City Attorney out of it.
- Having an independent investigator guarantees the integrity of the investigation, ensures a full and thorough investigation, and protects due process of all.
- The resolution also required the City Attorney to make a report of all whistleblower allegations and possible violations of Michigan's elections laws to the Michigan Attorney General.
- Bringing these allegations in a resolution provided transparency.

I do think the criticism that the BLP was not provided the information sooner is fair and wish that had been handled differently.

Ultimately, if the City Council had not acted on Monday, we would have been criticized no matter

has been handled differently.

Ultimately, if the City Council had not acted on Monday, we would have been criticized no matter what for either waiting too long to disclose these allegations, for disclosing these matters too close to an election or after an election, or for not having an independent evaluation sooner.

I want to again thank the whistleblower for their tremendous courage in bringing these allegations forward and their trust that they would properly investigated. The Council and BLP both indicated that the whistleblower should not be retaliated against in any way.

While a significant amount of evidence has been shared with the City Attorney, these do remain allegations at this point. I am committed to making sure the findings of this independent investigation will be released to the public in their entirety upon its conclusion for full transparency.



Whistleblower Allegations and Response

(**Exhibit I**, Cummins FB Post).

74. The Facebook post made by Councilman Cummins outwardly insinuated that the City Attorney had enough information to determine it was likely that the BLP was in violation of both civil and criminal laws.

75. Incredibly, the Whistleblower who brought the complaint was represented by attorney Sarah Howard, the attorney for Andrea Hendrick, and also a colleague at City Attorney Ronald Bultje's daughter's law firm.

76. At the September 18, 2023, City Council meeting, City Attorney Bultje stated there was a particular file of 6,000 emails that would be especially pertinent to the investigation.

77. However, after conducting a months long investigation, Foster Swift's independent report clearly states that it is unclear what file of emails was being referred to by City Attorney Bultje. (**Exhibit H**, Foster Swift Report).

78. The Grand Haven City Council resolution on September 18, 2023, authorizing an independent law firm led investigation was a retaliatory action taken against Mr. Walters in response to his FOIA request and contract and legal claims he had raised against the BLP and City Council.

79. Nonetheless, the ensuing Whistleblower investigation by Foster Swift, which culminated in the "Confidential Investigation Report for the City of Grand Haven," found that the whistleblower's claims against both the BLP and Mr. Walters were *not substantiated* by the evidence. (**Exhibit H**, Foster Swift Report).

Mr. Walters Proposes a Separation Agreement

80. Due to how toxic and hostile the environment at the BLP had become for Mr. Walters, as well as the refusal of the BLP to investigate any of his claims, Mr. Walters presented the BLP with a proposed "Separation Agreement" on October 13, 2023. (**Exhibit J**, Separation Agreement).

81. This proposed Separation Agreement was negotiated between Mr. Walters and Mike Westbrook (BLP Chair), Gerry Witherell (then BLP Vice Chair), and Danielle Martin (BLP HR/Administrative Services Supervisor).

82. Should it have been accepted, the proposed Separation Agreement would have provided the BLP with his 90-day written notice of retirement, as was required by the Second Employment Agreement.

83. Mr. Walters was assured by the Board that it would review the proposed Separation Agreement in closed session, and then a vote on the Separation Agreement would be conducted in the next open session.

84. Despite Mr. Walters offering his proposed Separation Agreement in good faith, the BLP failed to give it any substantive consideration.

85. The day after the closed session to review the proposed Separation Agreement, and without any vote in an open session, the BLP gave Mr. Walters a “take it or leave it” counteroffer (the “Board Counteroffer”) to his proposed Settlement Agreement. (**Exhibit K**, Board Counteroffer).

86. Upon being notified of the Board Counteroffer, Mr. Walters immediately refused it and revoked his proposed 90-day written notice of retirement.

87. Despite his displeasure at the Board Counteroffer, Mr. Walters was still willing to negotiate retirement terms with the BLP.

88. In the spirit of compromise, Mr. Walters presented the BLP with his own counteroffer, a revised employment agreement, which would have caused Mr. Walters’ employment with the BLP to end a year earlier than was contracted for in the Second Employment Agreement. (**Exhibit L**, Revised Employment Agreement Offer).

89. Mr. Walters made this counteroffer to the BLP because he believed it was crucial there be a planned succession strategy in place to ensure a smooth transition to the next General Manager upon his retirement.

90. Due to the ongoing issues Mr. Walters was having with the BLP in connection with the negotiations, he ended up withdrawing his counteroffer of a revised employment agreement, and agreed to continue working and seek further investigation into his claims.

The BLP Violates the Open Meetings Act

91. Following this sequence of events in October 2023, the Board went into closed session meetings in November and December to “Consider Information or Records Subject to Attorney-Client Privilege Pertaining to an Employment Matter with the General Manager Exempt from Disclosure Under

Section 13(1)(g) of the Freedom of Information Act.” (**Exhibit M**, BLP Meeting Agenda January 25, 2024).

92. Upon information and belief, the BLP held closed sessions in November and December of 2023 to discuss the dismissal of Mr. Walters, in direct violation of the Michigan’s Open Meetings Act, MCL § 15.261, *et seq.* (“OMA”).

93. Mr. Walters **did not** request a closed session be held to consider his resignation and/or dismissal from the BLP as General Manager.

94. Under MCL § 15.268(a), the BLP was only permitted to consider the dismissal of Mr. Walters in a closed session if he specifically requested it be done in a closed session.

95. Upon information and belief, these closed sessions included substantive deliberations regarding the dismissal of Mr. Walters from his position as General Manager of the BLP.

96. Upon information and belief, these illegal closed session meetings resulted in the BLP and City Attorney Bultje drafting the resolution titled “Board of Light and Power Board Resolution Regarding General Manager” (the “January 25th Resolution”) which was passed at the January 25, 2024, Board meeting of the BLP. (**Exhibit N**, 1-25-24 Resolution).

97. Mr. Walters was never informed of the Board deliberations regarding his dismissal until the January 25, 2024, Board meeting of the BLP, nor was the public permitted access to the deliberations.

98. The decision to conduct the deliberations of Mr. Walters’ dismissal in closed session, in direct violation of the OMA, is a brazen avoidance of the main purpose of the OMA, which is to promote transparency in government decision making in order to foster the public trust.

99. Mr. Walters was completely blindsided when the Board revealed, and subsequently approved, the January 25th Resolution at the January 25, 2024, BLP Board meeting.

100. The intent to violate the OMA is shown in an email from Danielle Martin to the BLP Board which states “Attached please find the proposed resolution regarding the General Manager. Attorney

Bultje has recommended it be kept confidential until the meeting, so it was not included in the packet made available to the public yesterday.” (Exhibit O, Martin 1-23-24 email).

101. An earlier email from Ms. Martin dated November 28, 2023, included documents detailing the cost of getting rid of Mr. Walters for the Board’s consideration, proving they intended to discuss his termination in closed session. (Exhibit P, Martin 11-28-23 email).

102. The January 25th Resolution claims the BLP did an internal investigation of the General Manager’s claims of a toxic work environment perpetuated by actions of the BLP meant to discriminate, harass, and retaliate against Mr. Walters.

103. The January 25th Resolution then states the BLP’s internal investigation concluded there was no basis for the General Manager’s claims, effectively dismissing them.

104. Mr. Walters was never interviewed or asked to provide any documents for the BLP’s alleged “internal investigation,” proving no substantive investigation was ever done.

105. The January 25th Resolution stated it was giving notice to Mr. Walters that, pursuant to Section 10(C) of the Second Employment Agreement, he was receiving 90-day notice from the BLP of his retirement.

Mr. Walters’ February 2024 FOIA Request

106. Following the January 25th Resolution, Mr. Walters made a FOIA request to the BLP on February 24, 2024, for the following information:

All records, and supporting materials, associated with the "*Grand Haven Board of Light and Power's internal investigation of the General Manager's claims,*" from which the Board made its findings and conclusions referenced therein, and then used these materials to support its actions in its resolution dated January 25, 2024 entitled "*Board of Light and Power Resolution Regarding General Manager.*" Additionally, please provide all documents, discussion notes, minutes, and any other materials associated with "the Board's" review of these investigative materials that resulted in the Board drawing its conclusions (not including the Board's review of other associated materials that may comprise written privileged and confidential "opinions" of the City Attorney, he apparently used to "confirm" this internal BLP investigation as stated in the resolution), and any records associated with "the Board" making such determinations (i.e. record of the Board's "hearing," what was presented, the record of the Board's deliberations and considerations, any additional comments received by them, and votes taken, whether "officially" or "by consensus" to draw their conclusions).

As the Board had almost no discussion during their January 25th, 2024 consideration of the "Board of Light and Power Board Resolution," a prepared resolution that was not specifically noticed on the Board's agenda (or included in the Board's packet of materials), except for what appeared to be prepared statements (in advance of the meeting) by Board members, I am also requesting herein any other correspondence, documents, or materials provided to Board members to influence or support the passing of the resolution on January 25, 2024.

(Exhibit Q, February 2024 FOIA Request).

107. The February 2024 FOIA request by Mr. Walters has revealed that the documentation used in the internal investigation conducted by the BLP was strictly limited to materials submitted by Mr. Walters himself.

108. The fulfilled February 2024 FOIA request provided Mr. Walters no public records of the alleged "internal investigation" by the BLP, and BLP officials later suggested there were no public records created and/or used in making its findings.

109. Due to the individual and collective acts of the defendants, Mr. Walters has suffered irreparable damage to his professional and personal reputation established through 35+ years of public service.

110. Mr. Walters has also suffered economic harm, including irreparable harm to his ability to supplement his income in retirement through consulting work as was previously planned.

111. At the March 21, 2024, meeting of the Board, the BLP passed resolutions regarding the whistleblower investigation and Mr. Walters' FOIA request.

112. The resolution regarding the whistleblower investigation affirmatively stated that the investigation did not provide evidence of cause to terminate Mr. Walters subject to Section 10(B) of the Second Employment Agreement.

113. However, the Board's other resolution regarding the information found in the August 16, 2023, FOIA request erroneously concluded that none of the documents provided evidence of discrimination, harassment, and retaliation by the BLP against Mr. Walters.

114. Plaintiff diligently and satisfactorily performed all job duties assigned to him pursuant to both the First and Second Employment Agreements.

115. At no point during his employment with the BLP was Plaintiff subject to any disciplinary action until the dispute precipitating this action arose.

**COUNT I – RETALIATION IN VIOLATION OF
MICHIGAN’S WHISTLEBLOWERS’ PROTECTION ACT
(AGAINST THE BLP)**

116. Plaintiff incorporates, as though fully set forth herein, the allegations contained in the preceding paragraphs.

117. At all relevant times, Defendant BLP was an employer and Plaintiff Mr. Walters was an employee covered by and within the meaning of the WPA, MCL § 15.361 *et seq.*

118. Defendant BLP is a public body within the definitions provided in MCL § 15.361(d)(iv).

119. MCL § 15.362 expressly prohibits employers from discharging, threatening, or other otherwise discriminating against an employee because the employee reports a suspected violation of a law, regulation, or rule, established by the State of Michigan, a political subdivision of the State of Michigan, or the United States, to a public body.

120. On June 7, 2023, at his annual performance appraisal, Mr. Walters raised a number of legal and contractual claims he believed to be violations of law to the BLP. (**Exhibit F**, Renewed Contract and Legal Concerns).

121. Mr. Walters made similar claims to the BLP Board both before and after June 7, 2023.

122. Mr. Walters' reporting of these suspected violations of law was a protected activity under the WPA.

123. Defendant BLP did not adequately investigate Mr. Walters' whistleblower claims, and instead dismissed them without conducting a thorough investigation.

124. Instead, Mr. Walters was discharged as a direct result of him reporting suspected violations of the law to the Board and the BLP.

125. Defendants retaliated against Plaintiff because of his protected activity, in violation of the WPA, by terminating his employment.

126. As a direct and proximate cause of Defendants' violations of the WPA, Plaintiff has suffered damages, including emotional distress, damage to his reputation, loss of earnings and benefits, damage to his earning capacity, and damage to his ability to find future employment.

WHEREFORE, Plaintiff requests that this Court enter a judgment in his favor against Defendants and award him any and all damages or injunctive relief allowed by the Whistleblowers' Protection Act, 15.361 *et seq.*, including, but not limited to, any applicable costs, expenses, and attorney fees along with any other relief this Court deems equitable and just.

COUNT II – BREACH OF CONTRACT
(AGAINST THE BLP)

127. Plaintiff incorporates, as though fully set forth herein, the allegations contained in the preceding paragraphs.

128. Mr. Walters entered into a valid and enforceable contract with the BLP, the Second Employment Agreement, to be the General Manager of the BLP.

129. The BLP has not acted in accordance with Section 1 of the Second Employment Agreement, which expressly provides that the contract is to be performed in accordance with "the Grand

Haven City Charter and Code of Ordinances, BLP policies and procedures, applicable state and federal laws, rules, regulations, orders, directives, and resolutions of any agency or entity of competent jurisdiction.” (**Exhibit B**, Second Employment Agreement).

130. Mr. Walters was illegally terminated by the BLP for raising whistleblower claims against the BLP, in violation of Michigan law, and therefore the BLP is in breach of the contractual provisions of Section 1 of the Second Employment Agreement.

131. The BLP has failed to conduct annual performance evaluations of the General Manager pursuant to Section 7 of the Second Employment Agreement, which requires the performance evaluation to “be in accordance with specific performance goals and similar criteria developed jointly by the BLP and Mr. Walters.” (**Exhibit B**, Second Employment Agreement).

132. Instead, individual Board members have informally, and publicly, evaluated the General Manager outside of the established process and criteria set forth in the Second Employment Agreement.

133. The Board and/or individual members of the Board have publicly alleged unsubstantiated misconduct by the General Manager which would subject him to termination under the provisions of Section 10(B) of the Second Employment Agreement, which is inconsistent with the practices and processes set forth in the Second Employment Agreement and the BLP Handbook.

134. As a result of the BLP’s failing to perform its obligations pursuant to the Second Employment Agreement between itself and Mr. Walters, Mr. Walters has suffered substantial damages.

WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and award him damages in an amount to be determined at trial, including any applicable injunctive relief, costs, expenses, and reasonable attorney fees along with any other relief this Court deems equitable and just.

COUNT III – VIOLATION OF THE OPEN MEETINGS ACT
(AGAINST THE BLP)

135. Plaintiff incorporates, as though fully set forth herein, the allegations contained in the preceding paragraphs.

136. Defendant BLP is a public body within the meaning of the Open Meetings Act (“OMA”), MCL § 15.262(a).

137. A “meeting” as defined by the OMA means “the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy. MCL § 15.262(b).

138. MCL § 15.268(a) expressly states that a public body may meet in a closed session only “[t]o consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, *if the named individual requests a closed hearing.*” (Emphasis added.)

139. Mr. Walters did not request a closed hearing to deliberate his dismissal with the BLP.

140. The Board of the BLP conducted closed session meetings during November and December of 2023 to deliberate the dismissal of Mr. Walters from his position as General Manager of the BLP.

141. Deliberating on, and subsequently drafting the Resolution on, Mr. Walters’ dismissal in closed session was a violation of the OMA.

142. Upon information and belief, the Board intentionally violated the OMA to deliberate the dismissal of Mr. Walters.

143. The BLP’s blatant violation of the OMA is the direct and proximate cause of irreparable injury to Mr. Walters’ professional and personal reputation.

144. The Approved Minutes of the January 25, 2024, BLP Board Meeting were made available to the public after being approved at the February 25, 2024, BLP Board Meeting.

145. Pursuant to MCL § 15.270(3)(a), this Court is permitted to invalidate a decision of a public body made in violation of the Open Meetings Act so long as it is brought within 60 days after the approved minutes are made available to the public.

WHEREFORE Plaintiff requests this Court enter judgment in his favor and award him any and all damages or injunctive relief allowed by the Michigan Open Meetings Act, 16.261 *et seq.*, including but not limited to, invalidation of the January 25, 2024 BLP Board Resolution Regarding General manager, any applicable costs, expenses, and attorney fees along with any other relief this Court deems equitable and just.

COUNT IV – TORTIOUS INTERFERENCE WITH CONTRACT
(AGAINST ANDREA HENDRICK AND RYAN CUMMINS)

146. Plaintiff incorporates, as though fully set forth herein, the allegations contained in the preceding paragraphs.

147. Mr. Walters had a valid contract, the Second Employment Agreement, with the BLP.

148. Defendants Andrea Hendrick and Ryan Cummins knew or reasonably should have known that Mr. Walters had a valid, enforceable, employment agreement with the BLP.

149. Defendants Andrea Hendrick and Ryan Cummins knowingly, intentionally, and improperly interfered with and disrupted Mr. Walters’ performance of the Second Employment Agreement, and ultimately caused the Second Employment Agreement to be terminated.

150. Defendant Hendrick’s distribution and discussion of BLP documents through her personal and work email addresses to Cummins and other supporters of the Coalition Charter change amendment, her conveniently timed recommendation of her personal attorney to the Whistleblower, and other actions, induced the BLP to breach the Second Employment Agreement with Mr. Walters.

151. Similarly, Defendant Cummins’ outward support for the Coalition’s elimination of the BLP, discussions of BLP matters with Defendant Hendricks, his Facebook post insinuating wrongdoing

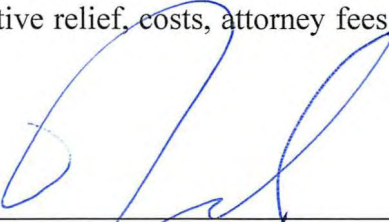
by the BLP and Mr. Walters, and other actions, had the effect of inducing the BLP to breach the Second Employment Agreement.

152. The actions undertaken by Defendants Hendricks and Cummins were outside the scope of their duties as elected officials of the BLP and City of Grand Haven.

153. As a result of the actions of Andrea Hendrick, and Ryan Cummins, Mr. Walters has suffered substantial damages and will continue to do so.

WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and award him damages in an amount to be determined at trial, including injunctive relief, costs, attorney fees and any other relief this Court deems equitable and just.

DATED: April 19, 2024

By: 
Matthew L. Wikander (P65160)
Christian E. Pederson (P87155)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Plaintiff
100 Monroe Center NW
Grand Rapids, MI 49503-2802
616-774-8000

DEMAND FOR JURY TRIAL

Plaintiff, David Walters, by and through his attorneys, Smith Haughey Rice & Roegge, demands a trial by jury of the issues in this case.

DATED: April 19, 2024

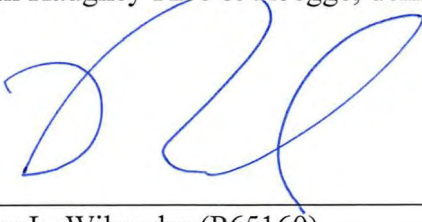
By: 
Matthew L. Wikander (P65160)
Christian E. Pederson (P87155)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Plaintiff
100 Monroe Center NW
Grand Rapids, MI 49503-2802
616-774-8000

EXHIBIT A

EMPLOYMENT AGREEMENT

This Employment Agreement is made as of December 19, 2014, between the Grand Haven Board of Light and Power, an elected board operating and having contractual authority over the department of the City of Grand Haven that provides electric utility service, the principal business address of which is 1700 Eaton Drive, Grand Haven, MI 49417 (the "BLP"), and David R. Walters, an individual residing at 211 West Huizenga Avenue, Zeeland, MI 49464 ("Mr. Walters").

RECITALS

A. After a lengthy selection process, the BLP has decided to employ Mr. Walters as its General Manager. Mr. Walters is willing to serve in that position.

TERMS AND CONDITIONS

For the consideration in and referred to by this Agreement, the parties agree:

1. Employment. The BLP employs Mr. Walters as its General Manager to perform the functions and duties of General Manager in a competent and professional manner, at the direction of the BLP and in accordance with the Grand Haven City Charter and Code of Ordinances, BLP policies and procedures, applicable state and federal laws, rules, regulations, orders, directives, and resolutions of any agency or entity of competent jurisdiction.
2. Term. This Agreement shall remain in effect from the date written above until terminated by one or both of the parties.
 - A. Mr. Walters shall serve at the pleasure of the BLP on an at-will basis. Nothing in this Agreement shall prevent, limit, or otherwise interfere with BLP's right to terminate its employment of Mr. Walters at any time, with or without cause, for any reason or no reason.
 - B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Mr. Walters to resign at any time from employment with the BLP.
 - C. Mr. Walters' employment by the BLP shall be Mr. Walters' exclusive employment during the term of this Agreement, and Mr. Walters shall devote his full energies and efforts to the performance of his duties under this Agreement.
 - D. Mr. Walters' full-time employment with the BLP will commence on January 19, 2015, if he successfully completes a drug test and physical examination, conducted at the BLP's expense, at a location of BLP's choice.
3. Salary. The BLP shall pay Mr. Walters an annual base salary of \$175,000.00, payable in installments at the same time as other BLP employees are paid. In addition, the BLP agrees to increase that base salary and/or other benefits of Mr. Walters in such amounts and to such extent as the BLP may determine that it is desirable to do so, on an annual basis based upon an annual performance evaluation of Mr. Walters as set forth in Paragraph 7 below.
4. Relocation. Mr. Walters has agreed to permanently relocate to the BLP Territory within 3 years from the commencement of his employment. The BLP believes such relocation will enhance his effectiveness as its General Manager and is compensating him based on his promise to relocate by such date. The BLP will reimburse Mr. Walters up to \$10,000.00, subject to withholding and deductions as may be required by law, for Mr. Walters' reasonable and necessary relocation expenses including packing and moving expenses for household goods and real estate fees. Relocation expenses do not include temporary housing costs.
5. Retirement Benefits. The BLP shall provide Mr. Walters the same retirement benefits afforded employees of the BLP.

6. Benefits. Mr. Walters shall be entitled to the employment benefits provided BLP employees under the BLP's general personnel policies except as modified as follows:

A. Mr. Walters shall be entitled to 5 weeks per year of paid time off ("PTO") until such time that Mr. Walters has been employed by the BLP for 15 years. At that time, Mr. Walters' PTO accrual rate will be the appropriate rate for his years of service based on the BLP's general personnel policies. PTO may be used for vacation, illness, personal reasons, or any other purpose as provided in the BLP's personnel policies.

B. Mr. Walters shall also be eligible to accrue an additional 3 days of PTO annually by achieving perfect attendance. Perfect attendance is defined as taking no unscheduled time off.

C. Mr. Walters, and Mr. Walters' dependents, shall receive the standard medical, dental, disability and related insurance benefits provided other non-union BLP employees.

D. Mr. Walters shall receive the same life insurance as non-union BLP employees.

7. Performance Evaluations. The BLP shall review and evaluate the performance of Mr. Walters at least once annually at the end of each fiscal year. This review and evaluation shall be in accordance with specific performance goals and similar criteria developed jointly by the BLP and Mr. Walters. Criteria may be added to or deleted from as the BLP may determine, in consultation with Mr. Walters. At the time of this annual evaluation, the BLP shall consider whether Mr. Walters' compensation should be adjusted, giving consideration to information regarding compensation paid to persons employed in similar positions with similar utility providers.

8. Travel and Transportation. Mr. Walters shall furnish his own vehicle for BLP business along with all necessary maintenance, operation, and insurance costs. The BLP will pay Mr. Walters a vehicle allowance of \$350.00 per month, and mileage reimbursement for mileage traveled outside the Grand Haven service territory for BLP activities, at the current Internal Revenue Service rate. Mr. Walters shall not be reimbursed for ~~Mr.~~ his travel to and from his residence to BLP's primary place of business at 1700 Eaton Drive, Grand Haven, Michigan, 49417. Mr. Walters shall maintain mileage and other records as required by BLP policies and Internal Revenue Service requirements and he shall be solely responsible to pay any federal, state, or other taxes due for such payments as are made under this Paragraph. Such vehicle allowance shall be reviewed annually by the BLP and may be adjusted accordingly as expenses to own and operate a vehicle escalate.

9. Professional Membership. The BLP expects Mr. Walters to be active in professional societies reasonably related to the performance of his duties as General Manager. The BLP will pay reasonable costs of such memberships, attendance at meetings, and other costs pertaining to such participation, as Mr. Walters and the BLP agree are reasonably necessary or advantageous, and in accordance with the BLP's annual budget. Mr. Walters must seek advance written approval, from the BLP for such expenses.

10. Termination and Severance Pay. This Agreement, and Mr. Walters' employment pursuant to it, may be terminated as follows:

A. By Mr. Walters' written resignation. Mr. Walters shall give written notice of his resignation at least 30 days prior to its effective date. If Mr. Walters fails to do so, then, any other provision of this Agreement notwithstanding, the BLP shall have no obligation to pay Mr. Walters for accumulated PTO, the amount of which the BLP shall be entitled to retain as liquidated damages for the costs it shall incur as a result of such sudden resignation.

B. By action of the BLP for any of the following reasons:

(1) Conviction or a plea of no contest to a felony;

(2) Misconduct, whether during or outside the course of employment, that substantially impairs Walters' ability to function effectively as General Manager or which brings disrepute to the BLP;

- (3) Gross negligence in the performance of duties;
- (4) Fraud or embezzlement;
- (5) Dishonesty, intentional falsification of records or documents, financial improprieties, misuse of position for personal gain, or deliberate misrepresentation of material facts to the BLP;
- (6) Willful neglect or abandonment of Walters' duties;
- (7) Drug test confirming the use of illegal substances, or intoxication while working;
- (8) Violations of federal or state laws, the Grand Haven City Charter or the Grand Haven Code of Ordinances which would expose the BLP to civil liability and/or affect the validity and enforceability of BLP actions; or
- (9) Material breach of this Agreement.

In such circumstances, the BLP shall pay to Mr. Walters the amounts due Mr. Walters for earned and unused PTO, but no other severance amounts.

C. By action of the BLP for any reason or no reason, other than as provided in the preceding subparagraph 10.B. If such action is taken, then the BLP shall pay Mr. Walters severance compensation equal to 6 months' pay, at Mr. Walters' pay rate at the time of termination, in addition to payment for his earned and unused PTO. Severance pay is subject to all applicable federal, state, and local taxes.

- (1) Severance pay may be paid monthly, through the BLP regular payroll process, or in a lump sum, at the sole option of the BLP.
- (2) In addition, the BLP shall continue health insurance provided to Mr. Walters for 6 months unless he becomes covered by another health insurance plan, at which event BLP health insurance shall terminate immediately. All other fringe benefits, including but not limited to those set forth in this Agreement, shall cease as of the effective date of Mr. Walters' employment termination.
- (3) The severance compensation under this Paragraph will not be provided if the BLP terminates Mr. Walters' employment for conduct, which in the BLP Board of Trustees' discretion, interferes with Mr. Walters' job performance or reflects a willful disregard for the BLP's interests.

D. By Mr. Walters' death, in which case no severance amount shall be paid.

11. Qualifications. BLP's employment of Mr. Walters is, in part, due to the experience, education and other qualifications Mr. Walters indicated Mr. Walters had in documents submitted to the BLP as part of Mr. Walters' application for the position of General Manager. Any inaccuracies in such information would constitute cause for termination of Mr. Walters' employment under subparagraph 10.B of this Agreement.

12. Confidentiality. Mr. Walters acknowledges that during the course of his employment by the BLP, he will have access to and knowledge of confidential or proprietary information related to the BLP's business and agrees to use such confidential or proprietary information only for the purposes of carrying out his duties with the BLP and will not otherwise disclose such information unless required by statute or law. These obligations shall not apply to any information that is now or becomes generally known or available to the public through no act of Mr. Walters. This section shall survive the termination of this Agreement for a period of 5 years and shall be in addition to any restrictions imposed on Mr. Walters by statute or law.

13. Miscellaneous.

A. This Agreement is written pursuant to the laws of the State of Michigan and was made in Ottawa County, Michigan. This is the entire agreement between the parties regarding its subject matter and it supersedes and replaces all prior agreements. This Agreement may not be modified or amended except in writing, signed by both parties. The captions are for reference only and shall not affect its interpretation. In case of any conflict between this Agreement and any personnel or other policies of the BLP, this Agreement shall control.

B. To the extent not prohibited by law, jurisdiction and venue of any action brought pursuant to or to enforce this Agreement shall be solely in the state courts in Ottawa County, Michigan.


C. Mr. Walters' rights and obligations under this Agreement are personal and are not transferrable or assignable.

The parties signed this Agreement as of the date first written above.

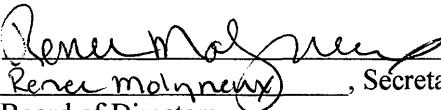
GRAND HAVEN BOARD OF LIGHT AND POWER

DAVID R. WALTERS

By: 
Jack Smart, Chairperson
Board of Directors


Date signed: 12/18, 2014

Date signed: 12/18, 2014

By: 
Renee Moloney, Secretary
Board of Directors

Date signed: 12/18, 2014

EXHIBIT B

EMPLOYMENT AGREEMENT

This Employment Agreement is made as of July 1, 2022, between the Grand Haven Board of Light and Power, an elected board operating and having contractual authority over the department of the City of Grand Haven that provides electric utility service, the principal business address of which is 1700 Eaton Drive, Grand Haven, MI 49417 (the "BLP"), and David R. Walters, an individual residing at 14637 Brucker Wood Court, Grand Haven, MI 49417 ("Mr. Walters").

RECITALS

Mr. Walters began his employment as the BLP's General Manager on January 19, 2015. Mr. Walters and the BLP desire to continue this employment under the terms of this Agreement.

TERMS AND CONDITIONS

For the consideration in and referred to by this Agreement, the parties agree:

1. **Employment.** The BLP employs Mr. Walters as its General Manager to perform the functions and duties of General Manager in a competent and professional manner, at the direction of the BLP and in accordance with the Grand Haven City Charter and Code of Ordinances, BLP policies and procedures, applicable state and federal laws, rules, regulations, orders, directives, and resolutions of any agency or entity of competent jurisdiction.

2. **Term.** This Agreement shall remain in effect from the date written above until Mr. Walters' retirement date, expected on December 31, 2026, or until Mr. Walters' earlier retirement date as set forth in Paragraph 10.

A. Mr. Walters' employment by the BLP shall be Mr. Walters' exclusive employment during the term of this Agreement, and Mr. Walters shall devote his full energies and efforts to the performance of his duties under this Agreement.

3. **Salary.** The BLP shall pay Mr. Walters an annual base salary of \$221,500, payable in installments at the same time as other BLP employees are paid. In addition, the BLP agrees to increase that base salary and/or other benefits of Mr. Walters in such amounts and to such extent as the BLP may determine that it is desirable to do so on an annual fiscal-year end basis, based upon an annual performance evaluation of Mr. Walters, and other considerations, as set forth in Paragraph 7. below.

4. **Relocation.** Mr. Walters has relocated to the BLP service territory as required within his original Employment Agreement. The BLP believes that relocation has enhanced his effectiveness as its General Manager and his compensation considers this relocation. Accordingly, Mr. Walters agrees to continue to reside within the BLP service territory for the term of this Agreement.

5. **Retirement Benefits.** The BLP shall provide Mr. Walters the same retirement benefits afforded other non-contract general employees of the BLP, as may be modified by the BLP should it decide to exercise the BLP's early retirement option as set forth in Paragraph 10. C.

6. **Other Benefits.** Mr. Walters shall be entitled to all employment benefits provided BLP non-contract employees under the BLP's general personnel policies during the term of this Agreement as may be modified below:

A. Mr. Walters shall accrue 4.31 hours per week (5.6 weeks per year) of paid time off ("PTO"), as may be modified during the term for non-contract employees with 15 years of service.

7. **Performance Evaluations.** The BLP shall review and evaluate the performance of Mr. Walters at least once annually at the end of each fiscal year. This review and evaluation shall be in accordance with specific performance goals and similar criteria developed jointly by the BLP and Mr. Walters.

Criteria may be added to or deleted from as the BLP may determine, in consultation with Mr. Walters. At the time of this annual evaluation, the BLP shall consider whether Mr. Walters' compensation should be adjusted, giving due consideration to his performance as determined through these evaluations, information regarding compensation paid to persons employed in similar positions, with similar qualifications, by similar utility providers, and the significant qualifications and experience Mr. Walters brings to this position.

8. Use of Utility-Owned Vehicle. The BLP shall furnish Mr. Walters an appropriate BLP owned vehicle for BLP business and personal use along with all necessary fuel, maintenance, operation, and insurance costs. Mr. Walters shall maintain personal mileage and other records as required by BLP policies and Internal Revenue Service requirements and he shall be responsible to pay any federal, state, or other taxes due for such taxable benefits as are provided under this Paragraph.

9. Professional Membership. The BLP expects Mr. Walters to pursue membership and active participation in state, regional, and national utility organizations, agencies, and associations that promote and provide energy options to Michigan electric utilities that positively impact BLP customer reliability, affordability, and sustainability, and other professional societies, associations, and agencies, and local civic organizations, related to the performance of his duties as General Manager. The BLP will pay reasonable expenses of such memberships, travel, attendance at meetings or conferences, and other costs pertaining to such participation, as Mr. Walters and the BLP agree are reasonably necessary or advantageous to the BLP, and in accordance with the BLP's annual budget. Additionally, Mr. Walters is hereby approved to continue to serve on the American Public Power Association Board of Directors through the expiration of his term in June of 2025.

10. Retirement. During the term of this Agreement, Mr. Walters' retirement may occur as follows:

A. By Mr. Walters' written retirement notification to the BLP. Mr. Walters shall give written notice of his retirement at least 90 days prior to its effective date. If Mr. Walters fails to do so, the BLP shall have no obligation to pay Mr. Walters for accumulated PTO, the amount of which the BLP shall be entitled to retain as liquidated damages for the costs it shall incur as a result of such sudden retirement. Should Mr. Walters retire prior to December 31, 2026, he shall be provided the full accrued benefits he has earned to that date under the existing MERS defined benefit plan provided by the BLP, but no modified retirement benefits as set forth in Paragraph C. below.

B. By action of the BLP for any of the following reasons:

- (1) Conviction or a plea of no contest to a felony;
- (2) Misconduct, whether during or outside the course of employment, that substantially impairs Mr. Walters' ability to function effectively as General Manager or which brings disrepute to the BLP;
- (3) Gross negligence in the performance of duties;
- (4) Fraud or embezzlement;
- (5) Dishonesty, intentional falsification of records or documents, financial improprieties, misuse of position for personal gain, or deliberate misrepresentation of material facts to the BLP;
- (6) Willful neglect or abandonment of Mr. Walters' duties;
- (7) Drug test confirming the use of illegal substances, or intoxication while working;
- (8) Violations of federal or state laws, the Grand Haven City Charter or the Grand Haven Code of Ordinances which would expose the BLP to civil liability and/or affect the validity and enforceability of BLP actions; or
- (9) Material breach of this Agreement.

In such circumstances, the BLP shall pay to Mr. Walters the amounts due Mr. Walters for earned and unused PTO, and any accrued retirement benefits allowed under the existing MERS plan, but no modified retirement benefits as set forth in Paragraph C. below.

C. By action of the BLP for any reason or no reason, other than as provided in the preceding subparagraph 10.B, with 90-day prior written notice to Mr. Walters. If such action is taken, then the BLP shall provide Mr. Walters the modified retirement benefits that would have been earned over the remainder of the term of this Employment Agreement through December 31, 2026 as described below.

(1) Mr. Walters effective retirement benefit at the time of this action by the BLP shall be calculated using his earned actual FAC at the time and 11 years, and 11 months of service (through December 31, 2026) under the terms of the existing BLP MERS defined benefit plan. The BLP will pay the costs to purchase any necessary additional years of service to MERS at the time of this BLP action for Mr. Walters to receive this benefit, less the estimated costs Mr. Walters would have otherwise paid over the remaining term of the Agreement for this benefit (10% of the FAC multiplied by the time remaining to December 31, 2026). Mr. Walters will then pay this amount to MERS at the time of this retirement.

(2) The BLP shall additionally provide retiree health insurance to Mr. Walters and his spouse, consistent with the benefit provided to regular full-time employees who began employment with the BLP before September 30, 2013 that retire with ten (10) years of credited service and did not elect to move to the Health Care Saving Plan benefit provided to regular full time employees hired after October 1, 2013.

D. By Mr. Walters' death, in which case no modified retirement benefits shall be provided.

11. Qualifications. BLP's continued employment of Mr. Walters is due to the experience, education and other qualifications Mr. Walters has brought to the position and his exemplary performance while in the position to date.

12. Confidentiality. Mr. Walters acknowledges that during the course of his employment by the BLP, he will have access to and knowledge of confidential or proprietary information related to the BLP's business and agrees to use such confidential or proprietary information only for the purposes of carrying out his duties with the BLP and will not otherwise disclose such information unless required by statute or law. These obligations shall not apply to any information that is now or becomes generally known or available to the public through no act of Mr. Walters. This section shall survive the termination of this Agreement for a period of 5 years and shall be in addition to any restrictions imposed on Mr. Walters by statute or law.

13. Indemnification. The General Manager shall be indemnified by the BLP as of right to the fullest extent now or hereafter permitted by laws in connection with any actual or threatened civil, criminal, administrative, or investigative action, suit, or proceeding, which is brought against Mr. Walters because of his employment hereunder, or in which he is a witness because of this employment. This right to indemnification does not apply to those actions, suits, or proceedings brought by or on behalf of the BLP and/or the City against Mr. Walters. This indemnification will be consistent to that provided the BLP in Section 31. of its by-laws as amended from time to time.

14. Miscellaneous.

A. This Agreement is written pursuant to the laws of the State of Michigan and was made in Ottawa County, Michigan. This is the entire agreement between the parties regarding its subject matter and it supersedes and replaces all prior agreements. This Agreement may not be modified or amended except in writing, signed by both parties. The captions are for reference only and shall not affect its interpretation. In case of any conflict between this Agreement and any personnel or other policies of the BLP, this Agreement shall control.

B. To the extent not prohibited by law, jurisdiction and venue of any action brought pursuant to or to enforce this Agreement shall be solely in the state courts in Ottawa County, Michigan.

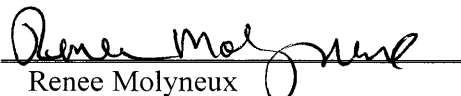
C. Mr. Walters' rights and obligations under this Agreement are personal and are not transferrable or assignable.

The parties signed this Agreement as of the date first written above.

GRAND HAVEN BOARD OF LIGHT AND
POWER

By: 
Larry Kieft, Chairperson
Board of Directors

Date signed: June 23, 2022

By: 
Renee Molyneux
Secretary of the Board

Date signed: June 23, 2022

DAVID R. WALTERS

By: 
David R. Walters

Date signed: June 24, 2022

EXHIBIT C

GRAND HAVEN BOARD OF LIGHT AND POWER
MINUTES
AUGUST 3, 2022

A special meeting of the Grand Haven Board of Light and Power was held on Wednesday, August 3, 2022 at the Board's office located at 1700 Eaton Drive in Grand Haven, Michigan and electronically via live Zoom Meeting.

The meeting was called to order at 4:00 p.m. by Chairperson Kieft.

Present were Directors Crum, Hendrick, Westbrook, Witherell, and Kieft.

Also present were David Walters, General Manager, Renee Molyneux, Administrative Services Manager and Secretary to the Board, and Rob Shelley, Distribution & Engineering Manager.

Director Witherell, supported by Director Crum, moved to approve the meeting agenda. The motion was unanimously approved.

Public Comment Period – Jeffrey Miller, 1120 S. Harbor Drive, read in a prepared statement that he is opposed to the Resolution the Board is considering at tonight's meeting. He doesn't feel the meeting is being held in an open and transparent manner due to having a 24-hour advance notice during the week of the Coast Guard Festival. He asked the Board to vote no on the proposed Resolution.

John Naser, 1450 S. Ferry, said the BLP is a department of the city, and the City Council has the final say on major BLP actions. He disapproves of the Board moving forward with tonight's Resolution and does not agree that the BLP would need to raise rates (if it paid for the city's portion of environmental remediation on Harbor Island).

Mac Davis, 209 S Third, stated he is concerned about a movement opposed to a democratic process, and he feels the BLP is not following a democratic process with the proposed Resolution. He asked the Board to reconsider moving forward with the Resolution.

Field Reichardt, 1053 Ohio Avenue, asked to have the camera focus on public speakers. He feels the city should draft an amendment to the Charter to dissolve the Board.

Ryan Cummins, 551 Gidley, stated that on March 7, 2022, the city rejected the BLP's recommendation to Council to enhance its approved legal services of Varnum to include employment and labor practices and further, the Council amended their agenda at the beginning of that meeting to allow Council to take action to remove its former approval of Varnum's legal services to the Board completely and require the Board to use the city attorney for all legal matters.

Ron Bultje, 113 Lafayette Avenue, current city attorney, cited Section 7.6(e) of the Charter, which he interprets to mean the city attorney is the Board's attorney, and Section 7.6(g), which states, upon request, an assistant attorney may be appointed. Council's action at their March 7, 2022 meeting required the Board to use Bultje for all legal matters. He stated what is being considered tonight is an action reserved by City Council and proceeding with approval will be a violation of the Charter. According to Section 2.7, violations of the Charter may be punishable with a fine of \$500 or imprisonment and/or possible removal from office. Bultje asked the Board to not take this action and stated, if they did, it would not turn out well for the Board.

Paul Peppin, 212 Sherman Ave., submitted an emailed written statement prior to the meeting. He extended his appreciation to BLP employees, who provide excellent, reliable service

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to our community and rapid restoration efforts whenever infrequent power outages occur. He said he had the opportunity to read the prepared comments from Jeffrey Miller and John Naser before this meeting and he shares their concerns regarding the Resolution the Board is considering at tonight's meeting. He feels a discussion should be held with City Council prior to acting and urged tabling action.

No formal action taken.

22-12A Director Witherell, supported by Director Westbrook, moved to approve the Resolution of the Grand Haven Board of Light & Power's Commitment to the Continued Environmental Remediation and Redevelopment of the Former Sims Power Plant Site on Harbor and Appointment of Varnum as Special Legal Counsel for Utility Matters:

**RESOLUTION OF THE GRAND HAVEN BOARD OF LIGHT AND POWER'S
COMMITMENT TO THE CONTINUED ENVIRONMENTAL REMEDIATION AND
REDEVELOPEMENT OF THE FORMER SIMS POWER PLANT SITE ON HARBOR
ISLAND AND APPOINTMENT OF VARNUM AS SPECIAL LEGAL COUNSEL
FOR UTILITY MATTERS**

WHEREAS the members of the Board of Light and Power, like those on the City Council, are City Officers, similarly committed to the betterment of the community and the representation of the citizens who elected them both (City Charter Section 4.1 (a)); and

WHEREAS the Board of Light and Power also performs a local electric utility regulatory function answerable to all approximately 14,700 residential, commercial, and industrial customers within the City of Grand Haven, Ferrysburg, and three surrounding townships; and

WHEREAS, unlike members of any boards and commissions of the City and administrative officers appointed by, under the authority of, and accountable to City Council (City Charter Section 4.1 (b), Section 7.14 and Section 7.20), the members of the Board of Light and Power have broader powers and authority of their own, and are assigned a unique charge, distinctive roles, responsibilities, and obligations to conduct the affairs of the city owned electric utility, subject only to the "general direction of the Council," which is not as clearly defined in the Charter as some have recently suggested (City Charter Chapter 14); and

WHEREAS, while the electric utility facilities and services constitute a department of the city government, this department, unlike others within the City's Administrative Service, is under the control and direction of the Board of Light and Power, City Officers themselves, and its administrative agent (City Charter Chapter 14), as opposed to the administrative structure of the City, except the city electric utility, under the more direct control of City Council, its administrative agent, and the boards and commissions of the city (City Charter Chapter 7); and

WHEREAS, the Board of Light and Power appoints its own administrative agent, exercises full control over its funds, makes contracts concerning the electric utility, has its own purchasing policies, can acquire and dispose of property in the name of the City for its purposes, is not subject to the same budget procedures as other departments, boards, and commissions, of the City, and possesses the full power and authority to set electric rates (City Charter Chapter 14); and

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WHEREAS, electric utility funds, including electric utility operating revenues, bond proceeds, and electric utility reserve funds, are additionally restricted by Charter and ordinance, and may only (1) defray the cost of operating the utility, (2) be used for the defined Project for which the bonds were issued, or (3) be utilized for the purpose for which the reserve funds were established (City Charter Chapter 14); and

WHEREAS, the Board of Light and Power desires, before moving forward further on the former Sims site environmental remediation, to establish a clear and mutual written agreement and understanding of the Board's governing roles, responsibilities, and funding obligations, and those of City Council and the Administrative Service of the City, with respect to the joint environmental remediation and redevelopment project of the former Sims Power Plant site between the Board of Light and Power, City Council, and other departments and administrative officers of the City. The project is no longer exclusively an electric utility project, as determined appropriate by City Council, although some elements and components of it continue to serve an electric utility purpose, and the project is now being directed by other appointed City administrative officers, under the direction of Council.

WHEREAS, the City Attorney has recently opined that the City Council and the Board of Light and Power may enter into an intragovernmental agreement for this purpose; and

THEREFORE, IT IS RESOLVED that the Board of Light and Power shall not approve further funding of the Sims site environmental remediation activities which are not directly under contract with the Board, or approve the use of electric operating revenues, electric utility revenue bond proceeds, or electric utility reserve funds for such purpose until a written agreement is drafted and approved by both the Board and the City Council to better define and clarify the roles, responsibilities, and funding obligations for the jointly governed project now led and controlled directly by the City Council and other appointed administrative officers of the City, and limited, if any, review and approval by the Board or involvement by BLP staff; and

BE IT FURTHER RESOLVED that the Board of Light and Power approves and appoints of Varnum as its special legal counsel for utility matters, as it has served in this fashion for over 25 years until February 2022. Varnum will then serve as an agent of the Board and will work with the City Attorney to negotiate and mediate such written agreement between the Board and City Council. The Board will not proceed in development of the written intragovernmental agreement with City Council without legal representation, and until Varnum's reinstatement by the Board is approved by City Council, which approval has historically been granted as a routine matter with due consideration of the Board's approval and recommendation.

BE IT FURTHER RESOLVED that the primary purpose and intent of these resolutions is to promote and facilitate productive dialog and discussion between the Board and City Council and legal representation of both governing bodies, with the goal of reaching a mutual understanding and agreement on a fair, equitable and reasonable allocation of the costs and other responsibilities associated with the environmental remediation of the Sims Power Plant site on Harbor Island, consistent with the requirements and parameters of the City Charter, bond finance covenants, applicable law and regulatory requirements.

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Grand Haven City Charter:

https://library.municode.com/mi/grand_haven/codes/code_of_ordinances?nodeId=PTICH

Chairperson Kieft provided the Board ten-minutes to review the Resolution so they may prepare their questions and comments.

Director Hendrick asked who prepared the Resolution and if an attorney assisted in that process.

The General Manager stated he drafted the Resolution, which was reviewed by Varnum as the Resolution considers their reinstatement. After then being asked, Walters stated no payment was made to Varnum for this review and no invoice for such services is expected.

Directors Crum and Witherell stated they had no further questions or concerns regarding the Resolution.

Director Westbrook said the key points should not be considered controversial, which include moving forward on dialogue with City Council and reappointing Varnum as BLP's special council to work with the city attorney on drafting the intragovernmental agreement. Westbrook stated he does not know what the fear is for the BLP to have its own representation.

The General Manager said the Board, through this Resolution, is approving Varnum as the BLP's attorney for utility matters, which has been done historically, and if approved tonight, this decision will again be brought to City Council at their August 15, 2022 meeting for their consideration, as has been done historically. This is the process the Board and Council have used for at least the last 25-30 years.

Ron Bultje said he does not see where the Board is asking for or recommending City Council approval of the Board's approval and appointment of Varnum within the Resolution.

The General Manager explained his understanding is the Board approves and appoints, then brings that decision to City Council for their approval. If Council does not approve, then Varnum is not approved by City Council, and the BLP will then not proceed without the representation it believes appropriate with the proposed discussions with Council toward reaching a written agreement, as it is stating in its Resolution. The General Manager sees no crime or Charter violation in the Board approving the proposed Resolution. The Board is simply asking City Council to reconsider Council's earlier action in February, where they denied the Board's request for special counsel it determined most appropriate and necessary to conduct the affairs of the utility. The Board continues in this determination, particularly in light of the need to develop and negotiate the proposed written intragovernmental agreement.

Director Witherell stated he does not agree with City Attorney Ron Bultje. We need outside legal help to walk us through this process of developing a written agreement. Witherell stated he is in total support of doing so. He does not believe the BLP should rely solely on the city attorney in the development of the written agreement or for all other utility matters. This has not been the Board's historical practice. Many recent utility concerns brought to the city have been ignored. The meeting the Board would have liked to have with Council will end up the same. He does not agree with the new interpretations of the Charter, nor did Scott Smith, former city attorney, agree with some of Bultje's current interpretations.

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While Director Hendrick desired additional discussion of the Resolution, there was no support to do so from the Board. Chairman Kieft then closed discussion and called for the vote.

In a roll call vote of the Board, those in favor: Directors Crum, Westbrook, Witherell and Kieft; those absent: none; those opposed: Director Hendrick. Motion passed.

22-12B Other Business – Director Westbrook, supported by Director Crum, moved to direct staff to bring the Board’s action to approve and appoint Varnum as special legal counsel, as contained in the approved Resolution, to City Council for their consideration at their August 15, 2022 meeting.

In a roll call vote of the Board, those in favor: Directors Crum, Westbrook, Witherell and Kieft; those absent: none; those opposed: Director Hendrick. Motion passed.

At 4:43 p.m. by motion of Director Witherell, supported by Director Westbrook, the August 3, 2022 Special Board Meeting was adjourned.

Respectfully submitted,

Renee Molyneux
Secretary to the Board

RM

EXHIBIT D

Board Members:
Larry Kieft, Chairperson
Todd Crum
Andrea Hendrick
Michael Westbrook
Gerald Witherell

Board of Light and Power

1700 Eaton Drive
Grand Haven, Michigan 49417
616/846-6250
Fax 616/846-3114



September 6, 2022

SENT VIA ELECTRONIC MAIL

Ronald Bultje
Dickinson Wright
200 Ottawa Avenue, NW
Grand Rapids, MI 49503

Ron,

As appointed City Attorney for the City of Grand Haven, and approved attorney by City Council to represent the Board of Light and Power in certain utility matters, you are aware of the Board's request to Council for alternative representation to that of the City Attorney as contained in the attached resolution adopted by the Board at its August 3, 2022 meeting. Specifically, the Board resolved to approve and reappoint "Varnum as its special legal counsel for utility matters, as it has served in this fashion for over 25 years." As you also know, drafted, and recommended, City Council instead passed the additionally attached alternative resolution in answer to the Board's request for Council to ratify and approve the Board's decision to reappoint Varnum at Council's August 15, 2022 meeting. This alternative Council resolution affirmed its past decision, unsolicited by the Board, to remove Council's previous approval of Varnum and again "refused to take action on the (renewed) request by the Board of Light and Power" to reappoint Varnum as special legal counsel for the Board.

In reviewing this action and similar previous requests, and drafting and recommending the resolution for Council's approval, you have reviewed and provided opinions as to your interpretations of City Charter provisions and of past practices of Boards and Councils relating to the appointment of the City Attorney, the powers and duties of the City Attorney relating to the Board of Light and Power, and the authority reserved exclusively, as you now suggest, to Council to "provide an assistant to the City Attorney" or to "retain special legal counsel" to handle any matter in which the city has an interest (including interests relating to the Board of Light and Power and its charge to conduct the affairs of the electric utility). While not your statement, we can only assume you agree with the City Manager's March 3, 2022 memo, as implied therein, to City Council that highlighted these City Charter provisions and suggested, "the Charter provisions on obtaining legal counsel are narrowly construed for good reason. Only City Council and the City Attorney are named as being involved in the selection of lawyers." As you also know, this statement contradicts the Whereas, in the Council's approved resolution suggesting, the Board By-laws, "as drafted by its former special legal counsel Varnum and the City Attorney," state, "The Board, as approved by the City Council, may additionally provide for an assistant to the City Attorney or retain special legal counsel to handle any utility matter in which the BLP has an interest."

While the Board has stated we do not agree fully with the applicability of certain Charter provisions cited in defense of Council's refusal to consider the Board's reappointment of Varnum, the Board has agreed to seek Council's approval regardless, consistent with its past practices in similar circumstances and its approved By-laws and agrees the governing bodies should collaboratively approve the selection of special legal counsel for

electric utility matters. We do not believe, as you have previously agreed, that our By-Laws contradict any specific Charter provisions. We completely disagree with the recent suggestions and new interpretations that the Charter prevents the Board from participating in the selection and approval of its attorneys by Council, that the Charter prevents the Board from independently directing the use of these attorneys once they have been approved by Council, or that the Charter requires extensive "oversight" by the City Attorney of such special legal counsels after they have been approved. We believe Council should, as it has always done historically, provide reasonable deference to the Board's determinations in such approvals to allow them to adequately perform their charge to "organize and conduct the affairs" of the electric utility "in a manner consistent with best practices therefore," and once attorneys are approved, general direction should be provided to them to appropriately coordinate their work with other attorneys of the City. We also feel that more cooperative practices between the governing bodies and their selection of necessary legal counsel, as they both determined appropriate, have resulted in providing adequate and appropriate legal services in the past.

In these regards, contrary to statements in Council's recent resolution, the Board has appropriately identified "areas of legal needs that are not being adequately serviced by the City Attorney." One only needs to review a small portion of the correspondences between you and the Board's utility manager to identify such inadequacies, whether you agree with details within these exchanges or not. Your responses within those exchanges have indisputably been dismissive, disrespectful, and condescending. Additionally, your accusations and judgement of wrongdoing, matters for the Board to decide, not you, are entirely inappropriate. If you have such concerns, there is an appropriate way to bring these to the Board's attention. Your efforts to discredit the manager, and at times the Board, undoubtedly represent a concern to the Board, if not a "legal conflict of interest," which you repeatedly suggest "cannot exist," while the City's/BLP's past approved labor and employment special legal counsel resigned in January citing to the Board, "it has become clear to me that, given recent events, our dual representation of the Grand Haven Board of Light and Power and the City of Grand Haven raise conflict of interests issues that impact my professional ethical responsibilities to both."

To be clear, such concerns are a problem to the Board, whether they raise to the level of a "legal (or ethical) conflict of interest," by your definition, or not. We do not feel these concerns can simply be dismissed as entirely the fault of the Board's staff, as you and others insist. Accordingly, we have determined that the Board's legal needs are not being adequately serviced in all utility matters by the City Attorney. These concerns were clearly highlighted in our discussions leading to the Board's resolution and request to City Council. The reasons why these concerns were contradicted and neglected in the resolution passed by Council, drafted by you, escape us. We are disappointed that neither you nor Council addressed our concerns you both know exist. The dismissal of our concerns at Council's meeting, and the characterization of the Board as the problem for raising them, is even more disturbing.

The Board of Light and Power not only has the right to request and recommend Council approval of special legal counsel on utility matters they deem appropriate, consistent with its By-laws and City Charter, we believe this is a responsibility, obligation, and duty of the Board to properly carry out our charge; and we believe the Council has an obligation to consider, and approve if determined reasonable and consistent with the Board's charge, such request and recommendation, in accordance with its charge to direct the Board "consistent with best practices therefore."

The Board's resolution specifically stated our determination and commitment to address these circumstances and obtain necessary special legal counsel before the Board and Council proceed in the development of a

written intragovernmental agreement; an agreement we feel is critical to resolving our community's issues on Harbor Island. As we have told you, we do not believe you are capable to individually mediate and negotiate such an agreement adequately representing both governing bodies. We feel this is our decision to make. Equally, we do not believe going forward, our environmental, utility, labor, and employment needs, as well as all other legal needs of every other department in the City, should all be met necessarily by one firm, even if that firm is capable and council deems the practice consistent with applicable provisions of the Charter. Surely, the Charter provisions were not written to prevent the Board or the Council from pursuing the legal services we feel necessary to properly carry out our charge as established for each governing body as has been done previously. It would seem Council, and the City Attorney as an appointed official of the City, should be most interested in ensuring the Board has the legal resources they deem appropriate and necessary to serve the community in the capacity with which they are charged.

We therefore are again requesting and recommending, consistent with the conditions we set forth in our recent resolution, that you address, and not dismiss, our concerns and issues. We have no intention of waiving these conditions before we move forward with development of a written intragovernmental agreement or the approval of further funding for activities conducted on the Sims site by other City departments. We also ask that as long as you are serving as the only legal advisor to the Board, you do so in a more responsive and respectful manner, as the Board, and its agents, direct. Accordingly, we are placing these same demands on our utility manager. As you wish him not to accuse or judge you of wrongdoing and improper behavior, we expect the same from you. We understand that you have reached out to Varnum to further discuss these issues and that they have continued to advocate in these discussions the reestablishment of the past working relationship that we believe was very successful for decades, and we believe Varnum should be reinstated as our resolution calls for. We appreciate these efforts and encourage you both to continue in them as a good faith measure toward resolving our concerns. Quite frankly, we do not understand the concerns raised by some that this "partnership" was not meeting the legal needs of the City and the BLP or was broken in some way and needed to be terminated. As stated, we fully believe the Board has identified "legal needs that are not being adequately serviced by the City Attorney" as we clearly stated in our resolution approved on August 3, 2022, and it is unacceptable to us that this concern is not being addressed appropriately before we are asked to consider further actions where we believe special counsel to be appropriate.

Sincerely,
GRAND HAVEN BOARD OF LIGHT & POWER



Larry Kieft
Chair, Board of Light and Power



Michael Westbrook
Vice-Chair, Board of Light and Power

Enclosures

C: GHBLP Board Directors
Mayor Catherine McNally
Mayor Pro-tem Ryan Cummins

EXHIBIT E



Memorandum

To: Ron Bultje
From: David Walters, General Manager
Date: August 8, 2022
Subject: Restatement of concerns from e-mails of August 4 and 5

In response to your e-mail to this distribution list, which was your intended audience not mine, suggesting:

"I will indeed be sending my response to all who are copied on this email. They will see your seven emails to me over 23 hours, and my two emails to you, asking you to stop so I can catch up. I would love to talk to anyone who thinks my behavior is over the top."

I would like to say to you, sharing selected personal e-mails between the two of us, portions of them, or restating my parts of the discussion in your words, when I was acting as administrative agent of the Board, without either my or the Board's approval, remains troublesome to me and members of the Board, and the practice has not served to mediate or resolve the differences of opinion and disagreements between the Board and the City Council. It has only served to add to the controversy. Whether it is "ethical" or not, is not an issue for me.

It would seem, this conversation you suggest above should then be accompanied equitably by a similar presentation from me to allow that same distribution list to be provided additional personal e-mails and conversations, or portions of them, of my selection to place in context these same conversations, particularly when you are using your words and suggest them as my own, as has occurred on numerous occasions recently, including in what has been referred to as legal opinions. I would additionally ask you, should the Board and City Council similarly be provided private conversations you have had with City Council's administrative agent, the past City Manager, when the two of you were discussing privately your potential or past opinions on Board of Light and Power matters? My personal thoughts, actions, and direction to you, on behalf of the Board, seem to be influencing your professional legal opinions regarding the charter much more than they should.

In my (non-legal) opinion, individual Board members or staff questions, comments, input, information, or future potential proposals or items of discussion, or portions of them that we mention to you, or you receive from us personally, through whatever means and fashion we provide them, are exactly that, our 'non-opinions,' and have no place in your 'professional legal opinions' on the Charter.

By the way, the reason for the "seven e-mails to you over 23 hours," was not that I wanted to inundate or inconvenience you during this busy time in Grand Haven. As I explained in them, I kept receiving additional comments from board members and city/BLP employees, past and present, and the general public in response to the Board's resolution and their reaction to it, so I reviewed the charter a bit more myself to follow-up and pass these concerns on to you. What I heard is "tell them" this or that and "they are wrong," in reaction to what was being disseminated publicly about the board, not by the board. Posting your opinion in the Tribune did not act to quell and clarify positions of the Board, it acted to focus the controversy on the differences in "opinion," in the broader sense, in the community, that the Board addressed in its resolution. There is no doubt others in the community do not agree with what was said, not by the Board, but by members of the community, yourself, and the Mayor Pro-Tem during and following the Board meeting on Wednesday. Others were then incited by more comments made in the press and on social media. Blame that on me if you wish, but my thoughts and expressions in these e-mails, as I said in them, were not solely my rants and ramblings, as you suggest. I too want this political rhetoric to stop, as I and the Board have been

dealing with it for quite some time, and I was asking for your assistance as our legal representative in doing so, to more clearly define the debate and public discourse, not take my side in them. And to bring a bit more civility into the treatment of the Board, as you no doubt piled on to last week by taking their actions from a legitimate city governance disagreement to a crime.

Regardless, whether you share these recent e-mails or not, the above is not the reason for this follow-up. I am below summarizing these extensive, tiresome “seven emails to (you) over 23 hours,” and add a bit more context, so that the Board and City Council can “catch up” a little more quickly, and in a more organized fashion, as you have stated you will share these e-mails with them. As you know, these e-mails expressed my concerns to you following your recent opinion (now released and published in the Tribune), and comments made by you, the Mayor Pro-tem, a former member of the Board, and members of the public at our meeting, and thereafter in the press and on social media, in reaction to the Board’s resolution approved at its meeting last Wednesday.

I would suggest we focus our continuing discussion this week on the following 6 positions of the Board, primarily referred to in the “whereas” statements of the Board’s resolution:

(1) The “Board of Light and Power” is not a “department of the city.”

- The members of the Board of Light and Power are “elected officers” of the City, exactly what the Board approved resolution suggested (Section 4.1 (a) of the Charter).
- While many, including myself, often use the name “Board of Light and Power” (or the initials BLP) synonymously with “the city electric utility” or the “the city electric utility department,” the Charter does not. There is clear distinction between the two in this document.

(2) The “city’s electric utility facilities and services” is a “department of city government.” (Section 14.1 of the Charter)

- The “city’s electric utility facilities and services” department of city government is clearly not, however, a “department of the city” or a “city department” established and defined as part of “**The Administrative Service**” of the City in Chapter 7 of the Charter or of the **City “Administration”** discussed in Chapter 2 of the Code of Ordinances of the City.
- “***All department directors and city departments*** (as defined herein) ***shall be under the supervision of the city manager.***” (Section 2-24 of the Code of Ordinances).
- Certain appointed officers “of the city” within the Administration of the city (as defined in Chapter 7 of the Charter) “hold office by virtue of appointment by the council,” and others “shall be appointed by the City Manager.” “***All persons employed by the city*** (apparently within the definitions used in this Chapter 7) ***who are not elective or administrative officers, or members of a board created by this charter, or declared to be administrative officers by or under authority of this section shall be deemed to be employees of the city.***”
- Contrarily, the “director of light and power” (the department head of the city’s electric utility facilities and services department of city government) is appointed by the Board of Light and Power and serves at its pleasure (this position is not then appointed by City Council or the City Manager, and thus is not included as a “city department head” by the definition in Chapter 7 of the Charter). The director of light and power “shall have the control and direction of the employees of the board.” (Section 14.2 of the Charter).

- Additionally, unlike “all departments of the city” established and defined in Chapter 7 of the Charter, “***the electric utility*** (department) ***of the city shall be under the control and direction of an elected board, to be known as the board of light and power.***”
- To suggest “all city departments,” particularly when reviewing provisions of Chapter 7 of the Charter, “***would include the Board of Light and Power*** (elected officers of the city, not a department at all), ***which according to Section 14.1 is a department of the City government, just like the Department of Public Works, the Department of Public Safety***,” as was done in your recent opinion (direct quote) that was then released to the Tribune, would seem to require some clarification to maintain consistency of that opinion with the actual words improperly referenced in the Charter. It would seem there is, at a minimum, substantial departmental differences that must be addressed in such an opinion, and not be set aside so dismissively, as I was pointing out in my personal e-mails. The public now needs to be made aware of these corrections before others further accuse Board members of violating their oath of office in these regards.

(3) The Board of Light and Power is established and defined differently than the city “boards” (Section 7.13) and “commissions” (Section 7.20) established in Chapter 7 of the Charter.

- Each Section in Chapter 7 discussing “city boards and commissions” refers to the necessary “appointment by council.”
- Section 2-76 of the Code of Ordinances state, “All members of city boards and commissions shall be appointed by the mayor, subject to confirmation by the City Council.” Are you suggesting this is also a definition describing Board of Light and Power elected officers?
- Members of the Board of Light and Power are clearly designated in Section 4.1 (a) of the Charter as “elective officers” of the city as opposed to the “appointive officers” of “any boards and commissions” created by or under the authority of this Charter (Section 4.1 (b)).
- Contrary to the plain words of Section 7.6 (e), it would seem there is, at a minimum, a valid argument that this provision does not apply to the Board of Light and Power. Should this too now be addressed to the public given both council members’ and the city attorney’s certainty of the application (in February and again at our meeting last Wednesday). If the “automatic” appointment of the City Attorney to the Board of Light and Power doesn’t occur in the same fashion as “Boards and Commissions of the city,” why would appointments of “special legal counsel” for the Board happen in the same manner? Past practice suggests the Board does have a role and authority here that is different than city Boards and Commissions defined in this Chapter. Is it not worth at least more specifically answering this concern or reviewing how the Board has been involved historically in the process of appointment and the assignment of legal work to its “special legal counsel for electric utility matters” before suggesting what has been done for years by the Board is “unauthorized” by the Charter?

(4) The “control and direction” by the Board of Light and Power of the “city’s electric utility facilities and services department” and the charge and powers of the Board to “conduct the affairs” of this department of city government, subject only to the “general direction” of City Council in Chapter 14 of the Charter is quite different, to say the least, than the direction from and accountability to City Council, the city manager, appointed city administrative officers, **departments heads**, and the boards and commissions of the city (and the other departments of the City Administration).

- Most noteworthy here, in relation to the resolution the Board passed last Wednesday, is the provision of the Board to “exercise full control of its funds,”..... maintain these funds in bank accounts “separate from other

city funds” provide no free public electric utility services to the city, and when such services cannot be metered, the cost of the services “shall be estimated and the annual cost thereof shall be paid by the city.”

- (5) Quite frankly, I am surprised that items (1) – (4) are in dispute, as they appear to be. As I told you, I have recently talked with a number of “old timers,” that would prefer to stay out of this debate at this point in time, but they all verified this is how the Board, and the electric utility department, have functioned for more than 60 years. As I have suggested to you on many occasions, should we at least try to confirm our historical practices before we determine every Board and City Council for some 60 years has acted improperly? Before we form an opinion on what the electric utility transfer language in the Charter meant in 1959, shouldn't we review what the applicable Charter language actually said at that time (before it was amended two times to get to what we have today)? Before we determine that property rights of the electric utility department facilities at that time, including the real property, was reserved by the City, and not provided to the Board of Light and Power upon its creation in exchange for the electric utility transfer, should we not do some sort of investigation, and confirmation of what some are suggesting without any direct knowledge or supporting documentation? The accusations against the Board seem to fly before any due diligence occurs. Improper subsidies for 60 years? An assumption that there was no transfer of real property in 1959 from the control of the City Council to that of the Board, or acquisition of property by the Board, when the Board was created to direct and control the city's electric utility and its facilities? What was this assumption based on? The simple fact that a title to the city from the city was not recorded? Is this even necessary? How did control of these facilities then get transferred? Has the Board not sold other property and equipment so transferred in 1959?

I know we disagree here, but the Board and I believe past interpretations of the Charter by past Boards, Councils, and City Attorneys, as reflected in actual practices matter. It would seem that interpretations of the Charter are now changing faster than the Board's practices.

- Items (1) – (4) above are not as ambiguous, however, as the Charter provision in Section 14.3 “**subject to general direction of the Council.**” Is this not the provision most of our differences center upon? Should we not focus on what this means more specifically when not clearly defined, particularly in an interdepartmental project?
- The Charter undoubtedly provides the Board certain powers, responsibilities, and authority to make certain decisions and take certain actions to conduct the affairs of the utility without Council's ratification. The Board also undoubtedly needs to gain City Council's ratification and approval for other actions and decisions of the Board as specifically required in applicable law. Then there is some “grey area” where the Board and City Council over the years have agreed on how certain other electric utility decision making should be made consistent with the principles highlighted in (1) – (4) above, as we did when an opinion required City Council approval of Sims retirement, and action not specifically mentioned in the Charter. This is where I believe understanding the historical practices by the Board and City Council on how the Board has selected, utilized, and gained City Council approval for “special legal counsel” over the last 25 years is entirely appropriate. I do not believe the Charter is as clear here as some suggest.
- I have no problem further discussing your question, “what if” the City Council again doesn't approve the Board's request for special legal counsel that the Board deems appropriate, in line with the discussion above and your reaction to it. But it appears from the Board's perspective, this is not as “cut and dried” as you have told them, particularly before both the current City Council and the Board agree on the proper applicability and interpretation of Section 7.6. I would ask you as well, what happens if the elected officers of the city don't all agree with certain provisions of a City Attorney opinion? Is this now a crime warranting removal from office?

- Isn't this question, however, a bit broader? What happens when the City Council directs the Board to do something, and the Board doesn't agree that the direction is consistent with their charge or specific duties and responsibilities in the Charter? Is this a crime? Can the City Council act on behalf of the Board, contrary to the Board's specific action, or in its absence? Can Council change a Board action and direct their own action in its place? Is this "general direction?" As John Naser put it in his comments at the Board meeting on Wednesday, does the City Council "have the last say" in all Board actions?

(6) An intragovernmental written agreement, from my perspective, is necessary because the environmental remediation and redevelopment of the former Sims Power Plant site has become an "interdepartmental" project, that requires both the City Administration departments, under the direction and control of City Council, and the electric utility department, under the control and direction of the Board of Light and Power to share responsibilities and funding in that "grey area" that the Charter does not specifically address. I would liken it to our previous Snowmelt System heat provision agreement. This project no doubt has an electric utility "purpose" and other purposes tied to other departments in the city Administration, that are not those of the electric utility.

I, and the majority of the Board agree, as evidenced by their approval of the resolution, that the positions taken by the Board therein this past Wednesday are lawful and completely consistent with long standing practices of the Board. My personal requests of you on Thursday and Friday were not to further address and opine on them or on my e-mails or behavior since. My requests centered on a response to those policy makers, and the political rhetoric accompanying their comments to the Board, and in the press and on social media, completely inconsistent, more so than the Board's resolution, with provisions of the Charter and historical practices of the Board. Before the Board and City Council can come to an understanding and mutual agreement going forward, we need to reach agreement on what the Charter actually states and does not state, what the historical record actually documents, and what has been the past practice of these two governing bodies in approving Board actions.

Ironically, some are now suggesting the Charter needs to be amended because the Board isn't properly following it (as it is now written). Why does it then need to change? Just enforce its clearly evident provisions. Is this reaction not an admittance of these individuals that the Charter doesn't now say what they want it to say?

Ron, as I suggested to you personally in my e-mails, I feel you need to work as "joint" legal counsel to the Board and Council, as long as you are assigned to do so, to ratchet down this political rhetoric expressed in the Tribune and on social media that disrespects and villainizes elected and appointed officers and staff in the city for performing their duties and responsibilities as they believe appropriate and consistent with their interpretations of the charter, and the known past practices of city government, even when such thoughts and actions may contrast with your own. From my perspective, there is a right way and a wrong way to resolve such disagreements. The Board of Light and Power has suggested a mechanism to do so jointly through mediation and negotiation of a mutual agreement, with both parties utilizing their own legal representation. Why are you so opposed to allowing this process to proceed in this fashion? What really is the danger in proceeding down the path highlighted in the Board's resolution? These are the real questions I was asking you to consider in my e-mails of last week, and again I would prefer you consider them carefully, as you suggested you would, before responding.

EXHIBIT F

Renewed General Manager “breach of contract” claims and legal concerns (a report given verbally to the Board during a closed session performance appraisal on June 7, 2023):

- (1) The Board, and its individual members, have **not** acted entirely in accordance with the City Charter, the Board’s by-laws and other BLP policies and procedures, applicable state and federal laws, rules, regulations, orders, directives and resolutions of any agency or entity of competent jurisdiction, as required in Section 1. of the Employment Agreement.
- (2) The Board has **not** conducted annual Performance Evaluations of the General Manager consistent with Section 7. of the Employment Agreement, and individual Board members have frequently, informally, and inappropriately evaluated the GM outside of this established process, making derogatory public comments themselves, or through other apparent surrogates, that have had the effect of harassing the GM, creating a toxic work environment, undercutting the organizational performance, and degrading the public’s confidence in the BLP, while taking no responsibility whatsoever for the accuracy of their statements or correcting their message after it was shown to be erroneous. Such public “Performance Evaluations,” made by individual Board members or their surrogates, which have included calls for removal for cause, have not been in accordance with “criteria developed jointly by the Board and the GM,” are entirely inappropriate, and **have irreparably damaged the public professional reputation of the GM cultivated over a 34-year career in municipal electric utilities, and his ability to supplement his retirement income, consistent with Section 10. of the Agreement, from employment/consulting elsewhere as he had planned.**
- (3) The Board has **failed** to implement a long-standing established goal within its Strategic Plan (agreed to by both the Board and the GM) to conduct a Board self-evaluation and establish an associated Board development plan to address significant governance deficiencies noted in the HCl’s 2016 Organizational Check-up and its 2021 Business Readiness Risk Assessment. Some of these issues were additionally noted by the HRC, in its recent review. (2016 BRRR Risk 2 attached)
- (4) The Board, or individual members of it, have publicly alleged unsubstantiated misconduct by the General Manager that represents offenses subject to Board termination of the Employment Agreement (under early retirement provisions Section 10. B.) without adequate and equitable due process, inconsistent with applicable laws and the principles, practices, and processes established in the Employment Agreement, the BLP’s Employee Handbook, and the BLP’s approved Core Values. In the case where such allegations were raised by a single Board member, other public officials, or those clearly affiliated with these people, the Board inappropriately and inadequately addressed the allegations (if at all), to protect the employee from such harassment and allow him to adequately perform the functions of the General Manager. A noted exception here is the way the BLP investigated and reviewed claims submitted to the HRC, in a manner consistent with the BLP’s Employee Handbook.
- (5) Local public officials, including Board members, have no doubt worked inside and outside of the Board room to willfully discredit, criticize, and disparage senior management at the BLP and misinform the public on the clear and verifiable accomplishments of the organization and its senior management staff and the demonstrable record of our team, resulting in wasted public communication efforts and monies, irreparable damage to the professional reputations of management, independent consultants, and advisors, and the degradation of the public perception of the organization by some.

- (6) The City Council's denial of Board requested alternative legal counsel(s), consistent with that the Board and its management have had access to for decades, and the refusal to appropriately mediate certain issues between the governing bodies, represents a substantial impediment to achieving BLP established objectives and adequately addressing some of the largest electric utility issues jointly facing the community.
- (7) Individual members of the Board have acted contrary to approved actions of the Board, in publicly criticizing the GM and management staff for appropriately implementing Board actions, policy and decisions and have schemed to undercut the will of the Board.
- (8) Inaccurate and blatantly false statements made by members of the Board, the City Manager, the City Attorney, and City Council members, regarding the BLP's environmental compliance activities on the Sims site prior to January 2022 (when City Council assumed the control of these activities), represent some of the most egregious, baseless, and meritless allegations against BLP staff to date. Such comments are easily contradicted by a simple review of the established and verifiable historical record, which members of both the Board and the City Council refuse to address through a mediation process, with each party afforded independent legal counsel of their choosing. The Board and its staff should, at a minimum, have access to past environmental legal counsel employed during this period to respond directly and appropriately to such misinformation.
- (9) **The Board has not appropriately concluded the BLP's Non-Discrimination and Non-Harassment internal investigation** conducted in response to claims brought by a local citizen and a Board member to the HRC, consistent with the BLP's established Non-discrimination and Non-harassment provisions within its Employee Handbook (that were determined applicable to Board members by the City Attorney). Specifically, Board discipline was not considered consistent with the independent findings of the BLP's publicly released Position Report.
- (10) To be clear on this point, the potential approval and implementation of the recently proposed charter amendment, will represent "an action by the BLP," or its successor under the Employment Agreement (the City of Grand Haven), that will no doubt facilitate the "early retirement" provisions under Section 10.C. of the current approved Employment Agreement. The Employment Agreement clearly pertains only to the position of "General Manager," at the direction of the Board of Light and Power, in accordance with the Grand Haven City Charter as it is now written. The Sections of the Charter applicable to this position (Section 14.2), and the Board of Light and Power more generally, are being eliminated by the amendment, and the new Energy Services department shall be managed by the City Manager (new Section 14.1). The "early retirement" is not being initiated by the Employee under 10. A. and it would not result from any actions listed in 10.B. Therefore, 10.C. applies, "by action of the BLP (or the City) for any reason or no reason." There is no validity, or consistency with the Employment Agreement, of public statements being suggested by some that "through the implementation of the proposed Charter Amendment, no jobs will be eliminated." The newly proposed **department head** position, entitled director of energy services, is **not** an equivalent position for the purposes of interpreting the Employment Agreement, with the director of light and power or the General Manager. This is clearly a demotion, and the position represents an "employee of the city," under the direction of

the City Manager, and not an “employee of the board,” responsible to the board under the Agreement, and as such the action will necessitate payment by the BLP of early retirement benefits consistent with Sections 10. C. (1) and (2), and any other amounts negotiated at that time as compensation to the employee to address any other “breach of contract claims” or other concerns discussed above.

I’m not providing this report to the Board in writing at this point, given the complete disregard of the applicable confidentiality provisions in the OMA, and the Board’s approved GHBLP Conflict of Interest and Ethics Declaration, in these circumstances by members of the Board previously (Section 8 (1) (a) of the OMA and item 6. of the Declaration form applies). I will be placing this report in my personnel file at some point later, noting it was verbally presented to the Board during my annual performance appraisal.

Michigan’s Whistleblower Protection Act (Act 469 of 1980) Section 2.

“An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body”

It is my understanding that, the federal Age Discrimination Act of 1967 (ADEA) and **Michigan’s Elliott-Larson Civil Rights Act (ELCRA)** prohibit employment discrimination on the basis of age (and/or gender).

Both laws apparently are applicable here, given clear and indisputable public statements previously made by a Board member, and noted above in the Board’s Position Statement to the HRC.

I consider, at this point, the release of these claims publicly or to the press by an individual board member, or a surrogate of the board member, without agreement of the Board as a whole, and myself at the conclusion of this personnel evaluation (or resolution of these concerns between the Board and Employee) a violation of the OMA, the approved procedures within the Employee Handbook, and Michigan’s Whistleblower Protection Act.

EXHIBIT G

Grand Haven Board of Light & Power

Freedom of Information Act Coordinator

1700 Eaton Drive

Grand Haven MI 49417

PHONE (616) 846-6250

FAX (616) 846-3114

REQUEST FOR DISCLOSURE OF RECORDS

By Authority of the Michigan Freedom of Information Act 442, P.A. 1976, as amended

Requester's Name: David Walters

Address (Street and Number): 14737 Brucker Woods Court

City: Grand Haven State: MI Zip Code: 49417

Home Phone: 616-215-8024 Business Phone: _____

Email Address: drwalters61@gmail.com

Organization (if any): Grand Haven BLP (General Manager)

I wish to examine receive a copy of the following materials:

E-mail and text correspondence to or from personal and/or

GHBP e-mail addresses and cell phones of GHBLP Board

Member Andrea Hendrick mentioning, discussing, or addressing


in any way GHBLP employee David Walters by name

(Dave or David) or by position (continued on attached)

I hereby request a waiver or reduction in fees as provided in Section 4(2) of FOIA, because:

- I am indigent or receiving public assistance (signed statement of proof attached)
- I represent a nonprofit organization of the type described in Section 4(2)(b) of the FOIA.

I understand that if it is determined that some or all of the materials which I have requested to review or have copied may not be disclosed, I will receive a written denial including the reason for denial and explanation of my right to appeal.

Signature of Requester 

Date 8-16-2023

E-mail and text correspondence to or from personal and/or GHBLP e-mail addresses and cell phones of **GHBLP Board Member Andrea Hendrick** mentioning, discussing, or addressing in any way **GHBLP employee David Walters** by name (Dave or David) or by position (General Manager, GM, or Director of Light and Power) **with** Grand Haven **Council Members** including Ryan Cummins, Kevin McLaughlin, and/or Karen Lowe **and/or GHEO/BLPCCC group members** including John Field Reichardt, Dennis Craun, John Nasser, Jeff Miller, David Mann, Steve Miller, and/or Jon Jellema **and/or reporters, writers, columnists, and/or submitters of “your views” in the Grand Haven Tribune** including Karalea Davis, Brendon Thomas, Jared Cramer, and/or Elizabeth Pell, since taking office as a Board Member in November, 2021.

EXHIBIT H

EXHIBIT I



Ryan Cummins - Grand Haven City Council Member

September 20, 2023 · 🌐



Whistleblower Allegations and Response

On September 5, the City Attorney notified the City Council of whistleblower allegations concerning the BLP. The City Attorney advised Council these may be violations of both civil and criminal laws.

On September 14, the City Attorney met with the whistleblower and their attorney for two and a half hours to assess the validity of the allegations. The whistleblower was able to provide the City Attorney with specific details and information about the allegations. The whistleblower also turned over 200,000 e-mails and pointed to 6,000 e-mail records as supporting their allegations.

Following the meeting with the whistleblower, the City Attorney advised Council Member Lowe and myself of his assessment. He also advised the Council of the same and that he was comfortable with a proposed resolution for an independent investigation into the whistleblower allegations.

On Monday, Council Member Lowe and I asked the Council to consider an independent investigation. Here are my reasons for asking for this:

- These allegations involve both members of management and some members of the BLP board.
- Considering who may be involved, and the dynamics of the Council/BLP relationship, I felt an independent investigation was best to take the Council, BLP, and City Attorney out of it.
- Having an independent investigator guarantees the integrity of the investigation, ensures a full and thorough investigation, and protects due process of all.
- The resolution also required the City Attorney to make a report of all whistleblower allegations and possible violations of Michigan's elections laws to the Michigan Attorney General.
- Bringing these allegations in a resolution provided transparency.

I do think the criticism that the BLP was not provided the information sooner is fair and wish that had been handled differently.

Ultimately, if the City Council had not acted on Monday, we would have been criticized no matter

...has been handled differently.

Ultimately, if the City Council had not acted on Monday, we would have been criticized no matter what for either waiting too long to disclose these allegations, for disclosing these matters too close to an election or after an election, or for not having an independent evaluation sooner.

I want to again thank the whistleblower for their tremendous courage in bringing these allegations forward and their trust that they would properly investigated. The Council and BLP both indicated that the whistleblower should not be retaliated against in any way.

While a significant amount of evidence has been shared with the City Attorney, these do remain allegations at this point. I am committed to making sure the findings of this independent investigation will be released to the public in their entirety upon its conclusion for full transparency.



Whistleblower Allegations and Response

EXHIBIT J

SEPARATION AGREEMENT

This Agreement, dated the _____ day of _____, 2023, between the **Grand Haven Board of Light and Power**, City of Grand Haven, Michigan (the “Employer”) and **David Walters**, 14637 Brucker Woods Court, Grand Haven, Michigan (the “Employee”), is made with reference to the following facts and circumstances.

A. The Employer and the Employee have amicably agreed to end the employment relationship in accordance with this Agreement.

B. In connection with the end of the employment relationship between the Employer and the Employee, the parties wish to resolve certain issues in accordance with this Agreement.

The Employer and the Employee agree as follows.

1. Employment Separation. The parties agree that the termination of the Employee’s Employment Agreement shall be effective at the end of day January 17, 2024. The Employee shall then cease performing duties for the Employer, and the Employee’s employment by the Employer shall terminate then. This is a mutual termination of the Employment Agreement upon 90-day notice received by the Employer on October 19, 2024.

2. No Additional Consideration. Other than as described in this Agreement, the Employer shall not be obligated to pay the Employee any additional compensation aside from that earned by hours worked.

3. Withholding and Payroll Taxes. The Employer shall deduct from any payment made under this Agreement all amounts required by federal, state, and local tax laws.

4. Paid Time Off. The Employer agrees to deposit an amount equal to 100 percent of the value of the Employee’s accrued Paid Time Off to the Employee’s 457 retirement account, up to the annual maximum contribution limit set by the Internal Revenue Service. The Employer agrees to a cash payout of 100 percent of the value of any remaining Paid Time Off balance in excess of the IRS annual maximum on or around the employee’s last regularly scheduled pay date.

5. Pension Benefits. The Employer will pay the costs to purchase three years of service credit used for the Employee’s pension calculation from the Municipal Employees’ Retirement System of Michigan. The Employee’s retirement date will be January 18, 2024.

6. Retiree Medical Insurance. The Employer will provide retiree health insurance to the Employee and his spouse, consistent with the benefits provided to regular full-time employees, until both individuals reach age 65 as described below. The Employee understands no dental, vision, or other coverage will be provided by the Employer.

- From January 18, 2024 until the Employee reaches age 65, the Employee will contribute 25 percent of the monthly premium cost for two person retiree coverage.
- Upon reaching age 65, the Employee must enroll in the Medicare supplemental plan offered at that time and contribute 100 percent of the monthly premium for single person coverage in order for his spouse to remain on the retiree plan. While his spouse is on the

retiree plan, the Employee will contribute 25 percent of the monthly premium cost for single person retiree coverage, until his spouse attains age 65.

- Upon the Employee and his spouse both reaching age 65, the Employee may voluntarily elect to participate in the Employer's Medicare supplemental plan offered at that time with the Employee contributing 100 percent of the monthly premium cost for two person coverage.

7. Severance. The Employer agrees to provide the Employee a lump sum severance payment no later than the employer's next regular payroll following January 17, 2024, in the amount of \$230,360 subject to normal payroll deductions and taxes. This is equivalent to one year's salary.

8. Release and Discharge. The Employee releases and discharges the Employer, including any and all of the Employer's officers, directors, agents, and employees, and the Employer releases and discharges the Employee, from all claims, demands, equitable relief, damages, liabilities, expenses, actions, and causes of action, of any kind or character, whether now known or yet to be discovered, and whether accrued or to accrue, under any contract and/or under any federal or state statute or the common law or in equity, relating to or arising out of the Employee's employment by the Employer and/or the end of the employment. The Employee and the Employer acknowledge that this release and discharge is intended as a general and complete release and discharge, except as otherwise required or not allowed by law.

9. Return of the Employer Property. The Employee agrees that he shall return all property of the Employer now in his possession except his cell phone and iPad that may be retained by the employee, however, the cost of continued service shall be paid by the Employee.

10. Non-Disparagement. The Employee agrees that he will not make any statement to any third party that is intended to or is reasonably likely to disparage, slander or otherwise damage the business reputation of the Employer or any of its executives, officers, board members, or employees. The Employer will not direct or authorize any of its directors or executive officers to make any statement to any third party that is intended to or is reasonably likely to disparage, slander, or otherwise damage the business reputation of the Employee.

11. Non-admission of Liability. Nothing in this Agreement is an admission of any wrongdoing, liability or unlawful activity by the Employer or the Employee.

12. References. The Employer will confirm the Employee's employment dates, last position held and last salary and will provide no further information, except as may be required by law or regulation.

13. Employee Acknowledgments. The Employee acknowledges that he has carefully read each provision of this Agreement; that he understands its contents; that he has been allowed the opportunity to have 21 days in which to consider its terms; that he has been advised to consult with an attorney before executing this Agreement; that he understands he has seven days from the date he executes this Agreement within which to revoke it; that the Employer has no obligation to comply with the terms of this Agreement until those seven days have expired; and that if he exercises his right

to revoke within the seven days, the Employer's obligations to comply with the terms of this Agreement shall be null and void. Accordingly, the Employee knowingly signs this Agreement as his own free and voluntary act and deed.

14. Miscellaneous. This Agreement contains the entire agreement and understanding of the parties, and it supersedes all verbal and written agreements. There are no additional promises or terms beyond those contained in this Agreement. Any amendments, deletions, or changes to this Agreement must be made in writing; no amendment, deletion, or change orally made shall be of any effect. The terms of this Agreement are to be interpreted and enforced under the laws of the State of Michigan. The terms of this Agreement shall be binding upon the parties, and upon their respective heirs, administrators, representatives, successors, and assigns.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The captions of this Agreement are for purposes of convenience only and shall not be deemed to be a part of this Agreement or be construed to alter or amend the terms and provisions of this Agreement. The various terms and provisions of this Agreement shall be deemed to be severable; the invalidity and/or unenforceability of any particular term or provision of this Agreement shall not alter or impair the validity and enforceability of any and all other terms and provisions of this Agreement.

The parties have executed this Agreement as of the dates appearing opposite their signatures.

WITNESS:

DAVID WALTERS

Signature

Signature

Dated: _____

Printed Name

**GRAND HAVEN BOARD OF LIGHT AND
POWER, CITY OF GRAND HAVEN,
MICHIGAN**

By: _____
Signature

Printed Name

Its: _____
Title

Dated: _____

EXHIBIT K

SEPARATION AGREEMENT

This Agreement, dated the ____ day of _____, 2023, between the **Grand Haven Board of Light and Power**, City of Grand Haven, Michigan (the “Employer”) and **David Walters**, 14637 Brucker Woods Court, Grand Haven, Michigan (the “Employee”), is made with reference to the following facts and circumstances.

A. The Employer and the Employee have amicably agreed to end the employment relationship in accordance with this Agreement.

B. In connection with the end of the employment relationship between the Employer and the Employee, the parties wish to resolve certain issues in accordance with this Agreement.

C. This Separation Agreement supersedes any and all prior Employment Agreements between the Employer and Employee.

The Employer and the Employee agree as follows.

1. Employment Separation. The parties agree that the termination of the Employee’s Employment Agreement shall be effective at the end of day January 17, 2024. The Employee shall then cease performing duties for the Employer, and the Employee’s employment by the Employer shall terminate then. This is a mutual termination of the Employment Agreement upon 90-day notice received by the Employer on October 19, 2024.

2. No Additional Consideration. Other than as described in this Agreement, the Employer shall not be obligated to pay the Employee any additional compensation aside from that earned by hours worked.

3. Withholding and Payroll Taxes. The Employer shall deduct from any payment made under this Agreement all amounts required by federal, state, and local tax laws.

4. Paid Time Off. The Employer agrees to deposit an amount equal to 100 percent of the value of the Employee’s accrued Paid Time Off to the Employee’s 457 retirement account, up to the annual maximum contribution limit set by the Internal Revenue Service. The Employer agrees to a cash payout of 100 percent of the value of any remaining Paid Time Off balance in excess of the IRS annual maximum on or around the employee’s last regularly scheduled pay date.

5. Pension Benefits. The Employee shall receive the retirement benefit effective as of the date of separation. Such benefit shall be calculated using his earned actual FAC at and service credit earned through hours worked.

6. Retiree Medical Insurance. The Employer will provide retiree health insurance to the Employee and his spouse until both individuals reach age 65 as described below. The Employee understands no dental, vision, or other coverage will be provided by the Employer.

- From January 18, 2024 until the Employee reaches age 65, the Employee will contribute 25 percent of the monthly premium cost for two person retiree coverage.
- Upon reaching age 65, the Employee must enroll in the Medicare supplemental plan offered at that time and contribute 100 percent of the monthly premium for single person

coverage in order for his spouse to remain on the retiree plan. While his spouse is on the retiree plan, the Employee will contribute 25 percent of the monthly premium cost for single person retiree coverage, until his spouse attains age 65.

- Upon the Employee and his spouse both reaching age 65, the Employee may voluntarily elect to participate in the Employer's Medicare supplemental plan offered at that time with the Employee contributing 100 percent of the monthly premium cost for two person coverage.

7. Severance. The Employer agrees to provide the Employee a lump sum severance payment no later than the employer's next regular payroll following January 17, 2024, in the amount equal to nine months of his current salary subject to normal payroll deductions and taxes.

8. Release and Discharge. The Employee releases and discharges the Employer, including any and all of the Employer's officers, directors, agents, and employees, and the Employer releases and discharges the Employee, from all claims, demands, equitable relief, damages, liabilities, expenses, actions, and causes of action, of any kind or character, whether now known or yet to be discovered, and whether accrued or to accrue, under any contract and/or under any federal or state statute or the common law or in equity, relating to or arising out of the Employee's employment by the Employer and/or the end of the employment. The Employee and the Employer acknowledge that this release and discharge is intended as a general and complete release and discharge, except as otherwise required or not allowed by law.

9. Return of the Employer Property. The Employee agrees that he shall return all property of the Employer now in his possession except his cell phone and iPad that may be retained by the Employee, however, the cost of continued service shall be paid by the Employee. The Employee shall return any applicable property to the Employer promptly upon his separation date.

10. Non-Disparagement. The Employee agrees that he will not make any statement to any third party that is intended to or is reasonably likely to disparage, slander or otherwise damage the business reputation of the Employer or any of its executives, officers, board members, or employees. The Employer will not direct or authorize any of its directors or executive officers to make any statement to any third party that is intended to or is reasonably likely to disparage, slander, or otherwise damage the business reputation of the Employee.

11. Non-admission of Liability. Nothing in this Agreement is an admission of any wrongdoing, liability or unlawful activity by the Employer or the Employee.

12. References. The Employer will confirm the Employee's employment dates, last position held and last salary and will provide no further information, except as may be required by law or regulation.

13. Employee Acknowledgments. The Employee acknowledges that he has carefully read each provision of this Agreement; that he understands its contents; that he has been allowed the opportunity to have 21 days in which to consider its terms; that he has been advised to consult with an attorney before executing this Agreement; that he understands he has seven days from the date he

executes this Agreement within which to revoke it; that the Employer has no obligation to comply with the terms of this Agreement until those seven days have expired; and that if he exercises his right to revoke within the seven days, the Employer's obligations to comply with the terms of this Agreement shall be null and void. Accordingly, the Employee knowingly signs this Agreement as his own free and voluntary act and deed.

14. Miscellaneous. This Agreement contains the entire agreement and understanding of the parties, and it supersedes all verbal and written agreements. There are no additional promises or terms beyond those contained in this Agreement. Any amendments, deletions, or changes to this Agreement must be made in writing; no amendment, deletion, or change orally made shall be of any effect. The terms of this Agreement are to be interpreted and enforced under the laws of the State of Michigan. The terms of this Agreement shall be binding upon the parties, and upon their respective heirs, administrators, representatives, successors, and assigns.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The captions of this Agreement are for purposes of convenience only, and shall not be deemed to be a part of this Agreement or be construed to alter or amend the terms and provisions of this Agreement. The various terms and provisions of this Agreement shall be deemed to be severable; the invalidity and/or unenforceability of any particular term or provision of this Agreement shall not alter or impair the validity and enforceability of any and all other terms and provisions of this Agreement.

The parties have executed this Agreement as of the dates appearing opposite their signatures.

WITNESS:

DAVID WALTERS

Signature

Signature

Dated: _____

Printed Name

**GRAND HAVEN BOARD OF LIGHT AND
POWER, CITY OF GRAND HAVEN,
MICHIGAN**

By: _____
Signature

Printed Name

Its: _____
Title

Dated: _____

EXHIBIT L

EMPLOYMENT AGREEMENT

This Employment Agreement is made as of January 1, 2024, between the Grand Haven Board of Light and Power, an elected board operating and having contractual authority over the department of the City of Grand Haven that provides electric utility service, the principal business address of which is 1700 Eaton Drive, Grand Haven, MI 49417 (the "BLP"), and David R. Walters, an individual residing at 14637 Brucker Woods Court, Grand Haven, MI 49417 ("Mr. Walters").

RECITALS

Mr. Walters began his employment as the BLP's General Manager on January 19, 2015. Mr. Walters and the BLP desire to continue this employment until his retirement under the terms of this Agreement.

TERMS AND CONDITIONS

For the consideration in and referred to by this Agreement, the parties agree:

1. **Employment.** The BLP shall employ Mr. Walters as its General Manager to perform the functions and duties of General Manager in a competent and professional manner, at the direction of the BLP and in accordance with the Grand Haven City Charter and Code of Ordinances, BLP policies and procedures, applicable state and federal laws, rules, regulations, orders, directives, and resolutions of any agency or entity of competent jurisdiction.

2. **Term.** This Agreement shall remain in effect from the date written above until Mr. Walters' retirement date on June 30, 2025, or until Mr. Walters' earlier retirement date as set forth in Paragraph 13.

3. **Exclusive Employment.** Mr. Walters' employment by the BLP shall be Mr. Walters' exclusive employment during the term of this Agreement, and Mr. Walters shall devote his full work energies and efforts to the performance of his duties under this Agreement.

4. **Salary.** The BLP shall pay Mr. Walters an annual base salary of \$230,360, payable in installments at the same time as other BLP employees are paid. In addition, the BLP agrees to increase the base salary of Mr. Walters by 3.5% on July 1, 2023, and shall make any other changes in benefits for Mr. Walters as made for other general employees of the BLP during the Term of this agreement.

5. **Relocation.** Mr. Walters has relocated to the BLP service territory as required within the original Employment Agreement. The BLP believes that this relocation has enhanced his effectiveness as its General Manager and his compensation considers this relocation. Accordingly, Mr. Walters agrees to continue to reside within the BLP service territory for the Term of this Agreement.

6. **Retirement Pension Benefits.** Should Mr. Walters remain with the BLP for the Term of this Agreement until June 30, 2025, the BLP shall then provide Mr. Walters his Municipal Employees' Retirement System (MERS) pension benefits consistent with the BLP's current pension plan, except the benefit will be calculated using 12 years as his service credit. The BLP will pay all costs to purchase any necessary service credits associated with providing such benefit upon his retirement. Should an early retirement occur before June 30, 2024, as may be initiated by either Mr. Walters or the BLP, retirement benefits shall be as set forth in Paragraph 13.

7. **Retiree Medical Insurance.** The BLP will provide retiree health insurance to Mr. Walters and his spouse, consistent with the benefits being provided to other retirees, until both individuals reach age 65 as described below. Mr. Walters understands no dental, vision, or other coverage will be provided by the BLP. Specifically:

A. From July 1, 2025, until Mr. Walters reaches age 65, Mr. Walters will contribute 25 percent of the monthly premium cost for two-person retiree coverage.

B. Upon reaching age 65, Mr. Walters must enroll in the Medicare supplemental plan offered by the BLP at that time and contribute 100 percent of the monthly premium cost for single-person coverage under that plan. While his spouse remains on the retiree plan, Mr. Walters will also continue to contribute 25 percent of the monthly premium cost for single-person retiree coverage on that plan, until his spouse attains age 65.

C. Upon Mr. Walters and his spouse both reaching age 65, Mr. Walters may voluntarily elect to participate in the BLP's Medicare supplemental plan offered at that time with Mr. Walters contributing 100 percent of the monthly premium cost for two-person coverage.

8. Severance. The BLP agrees to provide Mr. Walters a lump sum severance payment if he completes the Term of this Agreement no later than the employer's next regular payroll following June 30, 2025, in the amount of \$238,423 subject to normal payroll deductions and taxes. This is equivalent to one year's salary.

A. Release and Discharge. Thereafter, Mr. Walters releases and discharges the BLP, including any and all of the BLP's officers, directors, agents, and employees, and the BLP releases and discharges Mr. Walters, from all claims, demands, equitable relief, damages, liabilities, expenses, actions, and causes of action, of any kind or character, whether now known or yet to be discovered, and whether accrued or to accrue, under any contract and/or under any federal or state statute or the common law or in equity, relating to or arising out of Mr. Walters' employment by the BLP and/or the end of the employment. Mr. Walters and the BLP acknowledge that this release and discharge is intended as a general and complete release and discharge, except as otherwise required or not allowed by law.

B. Non-Disparagement. Mr. Walters agrees that he will not make any statement to any third party that is intended to or is reasonably likely to disparage, slander or otherwise damage the business reputation of the BLP or any of its executives, officers, board members, or employees. The BLP will not direct or authorize any of its directors or executive officers to make any statement to any third party that is intended to or is reasonably likely to disparage, slander, or otherwise damage the business reputation of Mr. Walters.

C. Return of the Employer Property. Mr. Walters agrees that he shall return all property of the BLP now in his possession except his cell phone and iPad that may be retained by the employee, however, the cost of continued service shall be paid by Mr. Walters.

9. Other Benefits. Mr. Walters shall be entitled to all employment benefits provided BLP non-contract employees under the BLP's general personnel policies during the term of this Agreement as may be modified below:

A. Mr. Walters shall accrue 4.62 hours per week (6 weeks per year) of paid time off ("PTO") as may be modified during the term for employees with 15 years of service.

10. Mutual Goals and Objectives. Mr. Walters and BLP are entering into this Agreement to facilitate Mr. Walters' retirement on June 30, 2025, and to provide a smooth and planned succession of the organization's management leadership. Accordingly, in early 2024 Mr. Walters and the BLP will mutually establish goals and objectives both parties desire to accomplish during the Term of the Agreement. No further annual performance appraisals shall be conducted by the parties during the Term.

11. Use of Utility-Owned Vehicle. The BLP shall furnish Mr. Walters an appropriate BLP owned vehicle for BLP business and personal use along with all necessary fuel, maintenance, operation, and insurance costs. Mr. Walters shall maintain personal mileage and other records as required by BLP policies and Internal Revenue Service requirements

and he shall be responsible to pay any federal, state, or other taxes due for such taxable benefits as are provided under this Paragraph.

12. Professional Membership. The BLP expects Mr. Walters to pursue membership and active participation in state, regional, and national utility organizations, agencies, and associations that promote and provide energy options to Michigan electric utilities that positively impact BLP customer reliability, affordability, and sustainability, and other professional societies, associations, and agencies, and local civic organizations, related to the performance of his duties as General Manager. The BLP will pay reasonable expenses of such memberships, travel, attendance at meetings, and other costs pertaining to such participation, as Mr. Walters and the BLP agree are reasonably necessary or advantageous to the BLP, and in accordance with the BLP's annual budget. Additionally, Mr. Walters is hereby approved to continue to serve on the American Public Power Association Board of Directors through the expiration of his current term in June of 2025.

13. Early Retirement. During the term of this Agreement, Mr. Walters' retirement may occur as follows:

A. By Mr. Walters' written retirement notification to the BLP. Mr. Walters shall give written notice of his retirement at least 90 days prior to its effective date. Under these circumstances, the BLP will not provide Mr. Walters with the modified retirement pension benefits specified in paragraph 6.; the BLP will reduce the severance payment to Mr. Walters specified in paragraph 8. to nine months' salary, and the BLP will pay the retirement medical insurance benefits specified in paragraph 7. Should Mr. Walters not provide this 90-day written notice, the BLP shall retain, as liquidated damages for this sudden unplanned departure, the costs of any accrued accumulated PTO.

B. By action of the BLP for any of the following reasons:

1. Conviction or a plea of no contest to a felony; or
2. Misconduct, whether during or outside the course of employment, that substantially impairs Walters' ability to function effectively as General Manager, or which brings disrepute to the BLP; or
3. Gross negligence in the performance of duties; or
4. Fraud or embezzlement; or
5. Dishonesty, intentional falsification of records or documents, financial improprieties, misuse of position for personal gain, or deliberate misrepresentation of material facts to the BLP; or
6. Willful neglect or abandonment of Walters' duties; or
7. Drug test confirming the use of illegal substances, or intoxication while working; or
8. Violations of federal or state laws, the Grand Haven City Charter or the Grand Haven Code of Ordinances which would expose the BLP to civil liability and/or affect the validity and enforceability of BLP actions; or
9. Material breach of this Agreement.

In such circumstances, the BLP shall pay Mr. Walters for all earned and unused PTO and the BLP will provide all accrued retirement benefits at that time allowed under the existing MERS plan. The BLP will also provide Mr. Walters with the retiree medical insurance benefit specified in paragraph 7., but the BLP will not pay for the modified retirement pension benefits of paragraph 6., nor any severance payment.

C. By action of the BLP for any reason or no reason, other than as provided in the preceding subparagraph 10.B with 90 days prior written notice to Mr. Walters. If such action is taken, then the BLP shall provide Mr. Walters the retirement benefits specified in paragraph 6. and 7. and the severance payment of paragraph 8.

D. By Mr. Walters' death, in which case the modified retirement benefits and severance payment shall also be provided in full to Mr. Walters' beneficiaries.

14. Qualifications. BLP's continued employment of Mr. Walters is due to the experience, education and other qualifications Mr. Walters has brought to the position that has exceeded established performance standards while in the position to date.

15. Confidentiality. Mr. Walters acknowledges that, during the course of his employment by the BLP, he will have access to and knowledge of confidential or proprietary information related to the BLP's business and agrees to use such confidential or proprietary information only for the purposes of carrying out his duties with the BLP and will not otherwise disclose such information unless required by statute or law. These obligations shall not apply to any information that is now or becomes generally known or available to the public through no act of Mr. Walters. This section shall survive the termination of this Agreement for a period of 5 years and shall be in addition to any restrictions imposed on Mr. Walters by statute or law.

16. Indemnification. The General Manager shall be indemnified by the BLP as of right, to the fullest extent now or hereafter permitted by laws, in connection with any actual or threatened civil, criminal, administrative, or investigative action, suit, or proceeding, which is brought against Mr. Walters because of his employment hereunder, or in which he is a witness to because of this employment. This right to indemnification does not apply to those actions, suits, or proceedings brought by or on behalf of the BLP and/or the City against Mr. Walters. This indemnification will be consistent to that provided the BLP in Section 31. of its by-laws.

17. Miscellaneous.

A. This Agreement is written pursuant to the laws of the State of Michigan and was made in Ottawa County, Michigan. This is the entire agreement between the parties regarding its subject matter and it supersedes and replaces all prior agreements. This Agreement may not be modified or amended except in writing, signed by both parties. The captions are for reference only and shall not affect its interpretation. In case of any conflict between this Agreement and any personnel or other policies of the BLP, this Agreement shall control.

B. To the extent not prohibited by law, jurisdiction and venue of any action brought pursuant to or to enforce this Agreement shall be solely in the state courts in Ottawa County, Michigan.

C. Mr. Walters' rights and obligations under this Agreement are personal and are not transferrable or assignable.

The parties signed this Agreement to become effective as the first date written above.

GRAND HAVEN BOARD OF LIGHT AND POWER

By: _____
Michael, Chairperson
Board of Directors

Date signed: December ____, 2023

DAVID R. WALTERS

By: _____
David R. Walters

Date signed: December ____, 2023

Attested:

By: _____
Danielle Martin
Secretary, Board of Directors

Date signed: December ____, 2023

EXHIBIT M

EXHIBIT N

*Passed
11/25/24*

Board of Light and Power Board Resolution Regarding General Manager

WHEREAS, the General Manager has stated that the employment relationship between him and the Grand Haven Board of Light and Power (the "BLP") has been damaged by a toxic workplace because of actions by the BLP against him that discriminate, harass, and retaliate against him;

WHEREAS, the BLP has done an internal investigation of the General Manager's claims and has not found any basis for them;

WHEREAS, the BLP's internal investigation conclusions have been confirmed by the BLP attorney and by a neutral, third party employment agency;

WHEREAS, the General Manager has properly called on the BLP to promptly take definitive action regarding his employment status;

WHEREAS, the City's investigation by special counsel into a BLP employee's whistleblower accusations against the General Manager has not been completed;

WHEREAS, the General Manager and the BLP have a July 1, 2022 Employment Agreement, by which the BLP agreed to provide to the General Manager the benefits he requested if his employment is terminated without cause;

THEREFOR, the BLP Board resolves as follows.

1. Per Paragraph 10.C of the July 1, 2022 Employment Agreement, the BLP provides the General Manager written notice that his retirement will take effect 90 days after his receipt of this Resolution as adopted by the Board (i.e. April 24, 2024). The General Manager shall be provided with a copy of this resolution when it is considered by the BLP Board.
2. Upon his retirement, the General Manager shall receive all of the benefits permitted by Paragraph 10.C of the July 1, 2022 Employment Agreement.
3. During the 90 day period, the General Manager shall be fully paid by the BLP, but he shall not be actively at work for the BLP, except as specifically requested by the BLP, through the Board Chair or the Board Chair's designee. The General Manager is authorized to attend off-site conferences and trainings previously scheduled and approved by the BLP / (February 11 through 14 and 24 through 28).
4. If the final disposition of the FOIA request made by the General Manager against Director Hendrick provides evidence that the General Manager's allegations of discrimination, harassment, and retaliation by the BLP against the General Manager are warranted, the BLP will seek to negotiate more generous terms of separation for the General Manager, along with a release of any claims he may have against the BLP, all subject to a vote of the BLP Board.
5. If the City's investigation into the whistleblower accusations against the General Manager provides evidence that the BLP had cause to terminate the General Manager according to Paragraph 10.B of the July 1, 2022 Employment Agreement, the BLP reserves the right to terminate the General Manager accordingly and to not pay the General Manager the benefits

provided to him by Paragraph 10.C, all subject to a vote of the BLP Board.

6. The General Manager shall return all BLP property in his possession promptly upon his retirement date, which shall be April 24, 2024.

EXHIBIT O

From: [Danielle Martin](#)
To: [Michael J. Westbrook](#); [Kurt Knoth](#); [Todd B. Crum](#); [Mike Welling](#); [Andrea Hendrick](#)
Subject: Resolution
Date: Tuesday, January 23, 2024 1:48:00 PM
Attachments: [4865-1997-8649 v2 BLP Board Resolution Regarding General Manager.docx](#)

Directors,

Attached please find the proposed resolution regarding the General Manager. Attorney Bultje has recommended it be kept confidential until the meeting, so it was not included in the packet made available to the public yesterday. If you have any questions or comments on the resolution, please contact Chairperson Westbrook.

Attorney Bultje will not be available to attend this week's meeting due to a prior commitment. He has arranged for his colleague, John Weiss, to attend the meeting in his place.

Thank you,



Grand Haven
Board of Light & Power
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

Danielle Martin
Administrative Services Supervisor

616-607-1262
Fax 616-846-3114
dmartin@ghblp.org

EXHIBIT P

From: [Danielle Martin](#)
To: [Michael J. Westbrook](#); [Mike Welling](#); [Kurt Knoth](#); [Andrea Hendrick](#); [Todd B. Crum](#)
Subject: Special Meeting November 29, 2023
Date: Tuesday, November 28, 2023 9:11:00 AM
Attachments: [Executive Search Services RFP 2023.docx](#)
[Executive Search Firms.docx](#)
[1. 2022 06 23 Employment Agreement \(Current\) - D Walters.PDF](#)
[2. 2023 11 22 New Employment Agreement - Dave's Proposal.pdf](#)
[3. Calculations.pdf](#)

Directors,

Attached please find documents relating to Wednesday's scheduled Special Meeting.

The Executive Search Services RFP has no changes from the copy provided on the 16th. The dates highlighted yellow are place holders subject to change upon your direction of if/when you would like me to move forward with that process. I received a request from resident Ryan Cotton to include the firm he works for, govHRusa, on the firm list, which has been updated accordingly. I also want to correct two pieces of information I provided at the meeting on the 16th. First, the candidate pool of four was after the search firm had filtered through candidates – the overall candidate pool was larger. Second, Annette Allen let me know the timeline of almost one year was due to her giving such an advance notice of her intention to retire. She assured me it can be done much more quickly.

There are also three pdf documents relating to the planned closed session.

#1 is the General Manager's current Employment Agreement

#2 is the General Manager's preferred option to resolve his employment issues - a proposed revised Employment Agreement (confidential)

#3 is the employer cost for all options (confidential). Some options may no longer be on the table but have been included in this chart for comparison purposes.

The written legal opinion of the Board's available options, which is the purpose of the closed session, has not yet been received. Attorney Bultje was given short notice to review the new proposed Employment Agreement, so I do not expect to receive his opinion until just before the meeting. In that case, I will bring a hard copy for each of you.

Thank you,



Grand Haven
Board of Light & Power
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

Danielle Martin
Administrative Services Supervisor

616-607-1262
Fax 616-846-3114
dmartin@ghblp.org

EXHIBIT Q

Grand Haven Board of Light & Power

Freedom of Information Act Coordinator

1700 Eaton Drive

Grand Haven MI 49417

PHONE (616) 846-6250

FAX (616) 846-3114

REQUEST FOR DISCLOSURE OF RECORDS

By Authority of the Michigan Freedom of Information Act 442, P.A. 1976, as amended

Requester's Name: David Walters

Address (Street and Number): 14637 Bruker Woods Court

City: Grand Haven State: MI Zip Code: 49417

Home Phone: 616-215-8024 Business Phone: _____

Email Address: drwalters61@gmail.com

Organization (if any): GHBLP Employee

I wish to examine receive a copy of the following materials:

See Attached

Attached

I hereby request a waiver or reduction in fees as provided in Section 4(2) of FOIA. because:

- I am indigent or receiving public assistance (signed statement of proof attached)
- I represent a nonprofit organization of the type described in Section 4(2)(b) of the FOIA.

I understand that if it is determined that some or all of the materials which I have requested to review or have copied may not be disclosed, I will receive a written denial including the reason for denial and explanation of my right to appeal.

Signature of Requester David Walters Digitally signed by David Walters
Date: 2024.02.07 12:35:24 -05'00' Date _____

All records, and supporting materials, associated with the “Grand Haven Board of Light and Power’s internal investigation of the General Manager’s claims,” from which the Board made its findings and conclusions referenced therein, and then used these materials to support its actions in its resolution dated January 25, 2024 entitled “Board of Light and Power Resolution Regarding General Manager.” Additionally, please provide all documents, discussion notes, minutes, and any other materials associated with “the Board’s” review of these investigative materials that resulted in the Board drawing its conclusions (not including the Board’s review of other associated materials that may comprise written privileged and confidential “opinions” of the City Attorney, he apparently used to “confirm” this internal BLP investigation as stated in the resolution), and any records associated with “the Board” making such determinations (i.e. record of the Board’s “hearing,” what was presented, the record of the Board’s deliberations and considerations, any additional comments received by them, and votes taken, whether “officially” or “by consensus” to draw their conclusions).

As the Board had almost no discussion during their January 25th, 2024 consideration of the “Board of Light and Power Board Resolution,” a prepared resolution that was not specifically noticed on the Board’s agenda (or included in the Board’s packet of materials), except for what appeared to be prepared statements (in advance of the meeting) by Board members, I am also requesting herein any other correspondence, documents, or materials provided to Board members to influence or support the passing of the resolution on January 25, 2024.