



City of Grand Island

Tuesday, April 23, 2019

Council Session

Item I-1

#2019-148 - Consideration of Approving Resignation, Separation Agreement and General Release of Brent Clark as City Administrator

Staff Contact: Mayor Roger Steele

Council Agenda Memo

From: Mayor Roger Steele

Meeting: April 23, 2019

Subject: Resignation, Separation Agreement and General Release of Brent Clark as City Administrator

Presenter(s): Mayor Roger Steele

Background

According to Article III – Appointed and Hired Officials, Section 2-30 Officers; Appointive of the Grand Island City Code and Neb. Rev. Stat., §16-308, appointed officers may be removed at any time by the mayor with approval of a majority of the city council.

Discussion

Grand Island Mayor, Roger Steele and City Administrator, Brent Clark agree that differences have arisen in their respective management styles. Due to these differences, both parties desire to terminate the employment agreement. In spirit of a fair and equitable separation, and as required by Sections 4.2 through 4.3.6 of Mr. Clark's Employment Agreement with the City, a Resignation, Separation Agreement and General Release has been prepared for Council consideration.

According to Grand Island City Code Section 2-30, I am requesting approval of the Resignation, Separation Agreement and General Release of Brent Clark as City Administrator.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

The Mayor recommends City Council approve the Resignation, Separation Agreement and General Release of Brent Clark as City Administrator.

Sample Motion

Move to approve the Resignation, Separation Agreement and General Release of Brent Clark as City Administrator.

RESIGNATION, SEPARATION AGREEMENT AND GENERAL RELEASE

THIS RESIGNATION, SEPARATION AGREEMENT AND GENERAL RELEASE, hereinafter referred to as this "Agreement," is made and entered into this 15 day of April, 2019, by and between the City of Grand Island, hereinafter referred to as the "Employer," and Brent E. Clark, hereinafter referred to as the "Employee."

RECITALS

- A. The Employer has employed the services of Employee as City Administrator pursuant to an employment agreement dated December 10, 2018.
- B. Differences have arisen between the Employer's Mayor and the Employee regarding their respective management styles.
- C. On account of these differences in management styles, Employer and Employee desire to terminate the employment relationship between them.
- D. Employee and Employer agree that a fair and equitable separation would be in the best interests of both parties, as provided under the terms and conditions contained herein

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained below, the Employer and Employee mutually agree as follows:

- 1) Resignation. Employee hereby irrevocably resigns his position as City Administrator upon his execution of this agreement, said resignation to be effective upon his execution of this agreement and confirmation of such separation and approval of this Agreement by Employer's City Council (the "Effective Date"). The Employee hereby waives any rights of reinstatement with the Employer. Until such time as this Agreement is accepted by the City Council, Employee shall be placed and remain in paid administrative leave status and shall continue to receive pay and benefits as provided by the Employment Agreement by and between Employer and Employee dated December 10, 2018 (the "Employment Agreement"). Provided, however, in the event approval of this agreement is not approved by the City Council, on or before May 14, 2019, Employee shall be returned to active duty status unless such status is altered or terminated pursuant to Section 4 of the Employment Agreement.
- 2) Consideration and Release of Claims. Upon approval of this agreement by Employer's Council, as provided by the Employment Agreement, Employer shall promptly process a check or warrant payable to Employee in the amount of \$ 37,735.83 less deductions required by law or authorized by Employee, which amount represents the value of claims released as provided by Section 4.3 of the Employment Agreement together with his regular salary for the days employed up to and including the Effective Date, and unused accrued paid vacation leave. Employee agrees and stipulates this amount shall be in full satisfaction of any claims of the Employee has or may have against the Employer including, but not limited

to, compensatory damages, "Released Claims" as defined herein, accrued vacation, sick leave, and other benefits. As a material inducement to enter into this Agreement, Employee agrees to release the Employer, its officers, employees, officials and agents acting in their official capacity from all Released Claims. "Released Claims" means any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys fees, costs, torts, suits, at law or in equity or otherwise, whether direct or indirect and include, without limitation, all claims alleged or that could have been alleged arising out of Employee's employment by or work for the Employer prior to this Agreement. Said Released Claims include any claim or claims under federal or state constitutions, laws and regulations including, but not limited to, the Fair Labor Standards Act, and Title VII of the Fair Employment Practices Act, and for any and all known and unknown damages arising out of or in any way connected with the Employee's employment with the Employer.

This release is intended to cover all damages which the Employee now has or claims to have sustained, or any that the Employee might have in the future arising from his employment or separation of employment with the Employer, even though the Employee doesn't know about them at the present time. The Employee also releases the Employer from any claim he may have for attorney fees. This release specifically includes any and all claims, demands, obligations, and/or causes of action for compensatory and/or exemplary damages and/or other relief relating to or in any way connected with the subject matter of the action, terms, conditions and benefits of the Employee's employment, including, without limitation, emotional distress, disability, and other health benefits, whether or not specifically or particularly described herein. The Employee expressly waives any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has, through ignorance, oversight, or error, been omitted from the terms of this Agreement. The parties understand and agree this is a mutual release of claims and the Employer releases all causes of action that it may have against the Employee that would have arisen prior to the termination of employment.

- 3) Continued Medical and Dental Benefits. Employer and Employee recognize that Employee is legally entitled under COBRA to continue existing medical and dental benefits on a self-payment basis for such period of time as permitted under COBRA and under Nebraska statutes. Provided, however, Employer shall provide, at Employer's cost, health and dental coverage on the same basis as provided to non-union City employees for first three consecutive calendar months following the Effective Date.
- 4) Confidentiality. The parties represent and agree that they will keep the reasons concerning the appropriateness of Employee's continued employment confidential and will not disclose any information concerning the same to anyone other than legal representatives or unless compelled to disclose the same by court order. The parties acknowledge that this agreement must be submitted to and considered by the Grand Island City Council. Official action to approve this Agreement must be taken in open session of the City Council. The parties acknowledge that any such actions shall not be considered a violation of this section.

The parties agree that if this Agreement does not become effective for any reason, this Agreement shall be void and shall be deemed negotiation for settlement only and will not be

admissible in evidence or usable for any purpose whatsoever in connection with or at any trial or appeal in connection with the action.

The Employee agrees not to disparage the Employer and the Employer agrees not to disparage the Employee. The Employer, including its officers and employees, hereby agree not to make any derogatory or disparaging comments concerning the Employee to individuals making inquiries about Employee's employment or personal or professional qualifications.

The Employee agrees that Employer's Mayor may meet with Employer's City Council, in closed session, to discuss with the City Council matters pertaining to this mutual separation of employment, and that closed session is necessary to prevent needless injury to the Employee's reputation or that of others. Employee shall be permitted to be present in closed session, if any, pertaining to this mutual separation. Employee hereby waives the right to demand a public meeting under Neb.Rev.Stat. §84-1410(1)(d). The parties acknowledge that any such actions in closed session of the City Council shall not be considered a violation of this section.

- 5) Settlement Not To Constitute an Admission of Liability. The parties acknowledge and agree that the payment and acceptance of said settlement sum and the execution of this Agreement are the result of compromise and are entered into in good faith and shall never for any purpose be considered an admission of liability or a responsibility concerning any of the claims referred to in the action, and no past or present wrongdoing on the part of any of the parties shall be implied by such payment or execution.
- 6) Integration. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.
- 7) Severability. In the event that one or more of the provisions, or portions thereof, of this Agreement are determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.
- 8) Employee Acknowledgments:
 - a) Employee represents that he has read and understands the provisions of this Agreement and acknowledges that in executing this he does not rely, and has not relied, upon any representation or statement not set forth herein. This sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

- b) The Employee acknowledges that he had the opportunity to consult with legal counsel throughout the negotiation leading to this agreement and prior to the execution of this Agreement. The Employee further acknowledges that this agreement is written in a manner which is understood by the Employee and that the Employee has read this Agreement, understands the provisions of this Agreement, and voluntarily accepts this Agreement.
- 9) Choice of Law. This Agreement shall be interpreted, administered and enforced in accordance with the law of the State of Nebraska.
- 10) Counterparts This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the Employer and the Employee have caused this Agreement to be signed and executed the day and year written below.

Executed by the Employee this 15 day of April, 2019.

BY 
Brent E. Clark

Executed by the Employer this 15 day of April, 2019.

BY 
Roger G. Steele, Mayor

CONFIRMED AND APPROVED by the City Council of Grand Island, Nebraska, this ____ day of _____, 2019.

Roger G. Steele, Mayor

[attest]

RaNae Edwards, City Clerk

RESOLUTION 2019-148

WHEREAS, under Neb. Rev. Stat., §16-308, the office of City Administrator for the City of Grand Island, Nebraska, is an appointed position; and

WHEREAS, the Mayor, with the approval of the City Council, appointed Brent Clark to the position of City Administrator beginning March 1, 2019; and

WHEREAS, due to differences in management style, Mr. Clark wishes to explore other opportunities; and

WHEREAS, the Mayor and Brent Clark have mutually agreed to a Separation Agreement ending Mr. Clark's employment as City Administrator with the City of Grand Island, Nebraska effective April 23, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, to approve the Separation Agreement for Brent Clark as City Administrator with the City of Grand Island, Nebraska.

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Adopted by the City Council of the City of Grand Island, Nebraska, April 23, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 19, 2019	☐ City Attorney