

GRAND JUNCTION CITY COUNCIL

SPECIAL MEETING MINUTES

JULY 29, 2015

The City Council of the City of Grand Junction, Colorado convened into a Special Meeting on Wednesday, July 29, 2015 at 2:00 p.m. in the City Hall Auditorium, 250 N. 5th Street. Those present were Councilmembers Bennett Boeschstein, Marty Chazen, Chris Kennedy, Duncan McArthur, Barbara Traylor Smith, and Council President Phyllis Norris. Absent was Councilmember Rick Taggart. Also present were Interim City Manager Tim Moore, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Norris called the meeting to order. The audience stood for the Pledge of Allegiance led by Councilmember Kennedy.

The Council will Consider the Settlement of Possible Litigation and/or Claims by an Employee Against the City and/or Certain Other Employees and/or Instructing the Interim City Manager Relative to the Council's Decision on the Proposed Settlement

Council President Norris explained the purpose of the meeting and reviewed what the Council had done so far. She advised that the City Council held an Executive Session on July 27th to speak to their Special Counsel Marni Nathan Kloster. The attorney negotiated a settlement with the employee who stated her intent to file a claim against the City. The employee accepted the offer and the City Council will now discuss their thoughts on whether to accept the agreement.

Council President Norris asked the City Council how they would like to move forward with the discussion and whether or not the agreement should be read into the record.

Councilmember Kennedy thought it was important to read the entire agreement into the record so the community would be aware of what was behind the decision that they were making.

Councilmember McArthur felt the agreement would become part of the record when it was attached to the minutes and it was not necessary to read the entire agreement into the record but just review pertinent parts of the agreement.

Councilmember Boeschstein said that the agreement was a public record and the main points should be read into the record.

Councilmember Chazen felt that the entire agreement should be read into the record.

Councilmember Traylor Smith agreed with Councilmember McArthur in that only the main points should be read into the record for the discussion.

Council President Norris stated that the entire agreement should be read into the record because it was the purpose of the Special Meeting and because it was a tie vote, she asked Council if any of them had any strong feelings as to why the agreement should not be read into the record in its entirety.

Councilmember Traylor Smith said that her reason for not wanting the agreement read into the record was just because of the time it would take so she would support reading it in its entirety.

Council President Norris asked Councilmember Kennedy to read the entire agreement.

Councilmember Kennedy read the agreement into the record as follows:

“RESIGNATION AND SEPARATION AGREEMENT

This Resignation and Separation Agreement (hereinafter "Agreement") is made this 29th day of July 2015. The parties to the Agreement are Elizabeth Tice (hereinafter referred to as "Tice") and the City of Grand Junction (hereinafter referred to as "City" or "the City"). Collectively Tice and the City may be referred to as the "Parties."

RECITALS

A. Tice is currently employed by the City as a Management and Legislative Liaison. She resigned her employment with the City, effective July 29, 2015, and her last day of employment shall be July 29, 2015.

B. This Agreement is offered to Tice by the City on July 28, 2015. Its purpose is to provide severance pay to assist Tice in transitioning to other endeavors and also to fully and finally resolve any claims that Tice has or might have relating to the employment relationship and/or any and all other claim(s) Tice has or may have as of the date this Agreement is signed by all parties, against the City, its current and former employees, representatives and Council members, its attorneys, agents and self-insurance pool (jointly referred to as "Releasees").

C. The Parties' willingness to enter into this Agreement is not an admission of any wrongdoing or liability by either Party relating to their employment relationship and/or the termination of that relationship and/or any other of Tice's claim(s). In fact, each Party specifically denies any wrongdoing or liability to the other.

IN CONSIDERATION of the above Recitals, the payment set forth below, and the mutual covenants and agreements contained herein, as evidenced by Tice's signature and the signature of the Interim City Manager, the Parties agree as follows:

1. Tice hereby tenders her resignation from her employment with the City.

Tice's employment shall end at the close of business on July 29, 2015 ("Effective Date" or "the Effective Date").

2. Furthermore, because Tice has made claims against the City Attorney and the Human Resources Director, among others, the City Council has been advised in this matter by Ms. Marni Nathan Kloster as Special Legal Counsel to the City and Ms. Lori Karl of Mountain States Employers Council has been retained to investigate Tice's claims. Tice waives any and all claims that she

has or may have because of or arising out of their involvement and/or action in those regards.

3. Upon execution of this Agreement by Tice by 10 AM on July 29, 2015, this agreement will be brought to the City Council and be the subject of a special meeting on July 29, 2015 at 2 PM for consideration and approval of the Agreement/its terms and if approval is granted by a majority of the City Council, for express direction to be given to the Interim City Manager that he shall execute the Agreement.

4. Notwithstanding her separation as of the Effective Date, Tice agrees to be interviewed and participate, as determined necessary by the City, in the investigation of her complaints provided she is accompanied at any interview by her counsel. Her cooperation in the investigation(s) shall be without compensation or remuneration.

5. Tice shall return any and all documents, equipment, computer(s), I-pad(s), printer(s), keys, proximity cards, parking pass(es), written and electronic materials, files, data and metadata and the equipment, on which the same is made, maintained or accessed and any and all passwords, access codes or authorizations and any financial transaction devices and/or other things in her possession or under her control, which belong to the City.

6. Tice states and acknowledges that her resignation is with the full understanding of the consequences thereof and is voluntarily made and given.

7. The release of claims provided for herein shall be construed to be effective for any and all claims through the Effective Date of this Agreement and shall relate back to and include the entire term of Tice's employment with the City and her relationship with the City of Grand Junction and its officers, employees and Council.

8. The statement of potential claims and the release thereof by the Parties shall be deemed to be complete and all inclusive for all claims made or which accrued during her employment.

9. Tice acknowledges that the City Personnel Policies and various state and federal laws may afford her certain legal protection(s). Tice specifically and affirmatively a) waives full and complete recitation herein of each and every law and policy that may afford her certain legal protection(s) and b) waives those protection(s) because she is tendering her resignation freely, knowingly and voluntarily.

10. This Agreement shall be admissible for the purpose of establishing disposition of any and all claims arising out of or under the Agreement and/or relating to Tice's employment and/or the ending of the same. The offering of this agreement in settlement and compromise or any element of it shall not be admissible in any action in accordance with the principles of Colorado Rule of Evidence 408, if it is not signed by a/the Party/Parties.

11. No cause of action may be filed by either Party against the other with respect to any claims or causes of action released hereby after the Effective Date of this Agreement except for those causes of action arising under the enforcement of this Agreement.

12. The City and Tice agree that Tice shall be paid the gross sum of \$125,000.00, along with the payout of her accrued but unused paid time off

(PTO) leave. As of the date of this Agreement Tice may have 4.7145 hours of PTO with a gross value of \$221.58, assuming she has not taken any additional leave. Her PTO shall be paid in accordance with City policy. The payment of the gross amount of \$125,000.00 shall be in a lump sum and shall constitute consideration for full and final settlement of any and all claims, demands or causes of action Tice may now have against the Releasees identified above. By her signature on this Agreement Tice acknowledges the sufficiency of the payment as consideration for the release.

13. Tice shall be solely responsible for taking any and all action(s) to administer her retirement account(s) and insurance and any other program or benefit that was part of or incidental to her compensation while employed by the City.

14. Any and all payments to Tice shall be subject to applicable local, state and federal taxes and withholding in accordance with Tice's W-4 form on file with the City and other applicable deductions. Tice shall be solely and exclusively responsible for determining, reporting and paying any and all attendant tax liabilities arising out of or under the terms of this Agreement, including but not limited to changing filing status, quarterly filing, estimated tax and/or satisfying any other local, state or federal requirement.

15. Tice is entitled to continuation of insurance coverage in accordance with COBRA on or after the Effective Date (or the exact date upon which she becomes eligible) for a period of up to 18 months or until Tice is reemployed, assuming she properly elects such coverage.

16. Tice shall be solely and exclusively responsible for arranging the continuation of applicable coverage(s) and the payment of any and all premiums due on or after that date.

17. To the extent that Tice properly directs all verbal inquiries from prospective employers to only the Assistant Human Resources Director and the Assistant Human Resources Director receives the request, the Assistant Human Resources Director will take reasonable steps for her or his or her designee to respond to any verbal inquiries received about Tice by verifying that Tice was employed by the City, the position held, Tice's respective dates of employment and salary history. This provision does not affect the City's ability to fully release employment information pursuant to a signed authorization. This provision also does not affect Tice's ability to use the reference letter she previously obtained from former City Manager Rich Englehart.

18. In consideration of the provisions of this Agreement, Tice forever and completely releases and discharges the defined Releasees from any and all claims, demands, obligations, actions, liabilities, damages and attorneys' fees, known or unknown, of whatsoever kind and nature arising from, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, damages, injuries or losses which Tice may have or which may result, directly or indirectly, from her employment with the City, complaints she or someone on her behalf has made regarding Releasees, any investigation conducted by the City, the separation of her employment from the City and all processes and statements associated therewith, including but not limited to any matters stated in the July 29, 2015 meeting or related thereto and any other allegation, claim, demand or issue, whether raised or not, associated with the Releasees, which

exists or could have existed, as of the date of this Agreement is executed, which is July 29, 2015. Said release specifically includes, but is not limited to, claims, causes of action, demands or suits arising from or involving training, supervision, work related stress, stress related disorders, age, race or gender discrimination, harassment, occupational injury, disability or disease, claims for unemployment compensation, wage and hour/compensation claims, loss of status, prestige or reputation, breach of contract and/or a claim of a failed, incomplete and/or improper investigation into her complaint(s), claims related to CORA or the Open Meetings Act, allegations made by Claimant regarding Releasees and anything associated with her relationship with the City of Grand Junction and the employees and officers of each, including any claims or causes of action alleging violation of 42 U.S.C. §1983 to and through §1988, the First Amendment, Title VII, Age Discrimination Employment Act, Older Workers Benefit Protection Act, Americans with Disabilities Act, Colorado Anti-Discrimination Act, Family and Medical Leave Act and/or any other federal, state or local law, rule, regulation or policy specifically including claims under, arising out of or relating to the application or not of the personnel rules of the City of Grand Junction. Claims and damages resulting from negligent and/or intentional acts, which preceded the signing hereof, are specifically included within the scope of this release even if unknown to the Parties. Tice further warrants that there are no assignees, subrogees or other third parties who have a right to participate in this settlement or receive any of the consideration provided hereunder and Tice agrees to indemnify, defend and hold forever harmless the Releasees of and from any and all further claims which may be made against the Releasees by any person, firm or corporation acting for Tice or asserting a derivative claim from her.

19. Tice warrants she is over the age of 18 years and legally competent to execute, appreciate and fully understand this Agreement; that no claims for loss of consortium exist; AND THAT BEFORE SIGNING AND SEALING THIS RELEASE, SHE HAS FULLY INFORMED HERSELF OF ITS CONTENT AND MEANING, HAS HAD HER LEGAL COUNSEL EXPLAIN THE MEANING AND LEGAL SIGNIFICANCE OF EACH AND EVERY PROVISION HEREOF AND HAS EXECUTED THIS RELEASE WITH FULL KNOWLEDGE AND UNDERSTANDING THEREOF.

20. In consideration of the provisions of the Agreement, the City releases and discharges Tice from any and all claims, demands, obligations, actions, liabilities and damages, known or unknown, including but not necessarily limited to, hostile work environment, inappropriate and/or failed supervision, inappropriate and/or failed training, and any and all other claims or causes of action arising out of, or occasioned by, her employment with the City. Claims and damages resulting from negligent and/or intentional acts, which preceded the signing hereof, are specifically included within the scope of the release. Tice affirmatively represents that she is aware of no such claims, demands, obligations, actions, liabilities or damages.

21. Tice agrees she will not apply for or in any manner seek employment in any position in any capacity for or with the City.

22. Tice will withdraw/close all EEOC or CCRD charges filed by her, if any, regarding Releasees.

23. The parties have participated and had an equal opportunity to participate in the drafting of this Release. No ambiguity shall be construed against any party based upon a claim that either party was a drafter.

24. This Release shall be construed and interpreted in accordance with the laws of the State of Colorado, without regard to its choice of law rules or principles.

25. This Release contains the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior oral and written understandings and agreements between the parties.

26. Tice shall initial the following, if true, before signing
I have read and I understand the Agreement.

The Agreement is written in a manner such that I know what I am agreeing to. I am freely, voluntarily and knowingly signing and agree by signing to be bound by the agreement.

I have consulted with an attorney before signing.

DATED: July 2, 2015.

Elizabeth Tice

Benjamin Wegener
Attorney for Tice”

City Attorney Shaver pointed out a footnote that Councilmember Kennedy did not read that was at the bottom of page 3 of the Agreement and advised that it should be read into the record. Councilmember Kennedy read the following footnote on the bottom of page 3 into the record.

“Tice acknowledges that the net amount of the payment will be less based upon applicable deductions and withholdings and that Tice has been paid all wages to which she is legally entitled.”

Council President Norris asked Council for comments and discussion.

Councilmember McArthur stated that he didn't want to pay or agree to the agreement; however, based on advice given by Special Counsel Marni Nathan Kloster and the potential costs and circumstances of litigation, he felt it was in the City's best interest to agree to the settlement. He said that if he was independently wealthy and it was his personal money involved, he would feel strongly about litigating the issue.

Councilmember Boeschstein said that it is the City's goal to move forward in a positive and successful manner and to provide the best services to its citizens. He believed accepting the agreement would aid in accomplishing that goal.

Councilmember Chazen stated that the purpose of the meeting was to evaluate a settlement demand received by Elizabeth Tice that seeks a separation of her employment and a waiver of any alleged claims against the City and its Staff in

exchange for a severance payment. After analyzing several options with special counsel, he felt that the settlement agreement was the best way to complete the separation so that the City can direct its attention to other matters. He thanked the special counsel for competently guiding Council through the process. It was a frustrating experience with no good options. He is aware that making another severance payment will be unpopular, but he believes that the path they are looking at will minimize future litigation. There is no joy in making the decision but hopefully, it will move the City in a positive direction. By accepting the settlement, Council can focus on hiring a new City Manager and moving forward with the Economic Development Plan. He is looking forward to getting on with that work and getting this behind them.

Councilmember Kennedy said that even after the process of talking with the special counsel and understanding the options and the content of the separation agreement, he still doubted accepting it was the best way to move forward. He was concerned with the City organization and that the settlement may not set the City up to cure what is wrong with the City. He was unsure whether to vote affirmatively or negatively for the separation agreement.

Councilmember Traylor Smith stated that the process has been a grueling one for Council. Council spent a lot of time making difficult decisions. She agreed with Councilmember Kennedy regarding concerns about the City organization, but believed the City can move forward. Accepting the separation agreement is the path that Council has to take to avoid a legal process that could take years and be extremely expensive for the City.

Council President Norris agreed with several comments that Councilmembers made and said that the situation has been very difficult, but Council has to step back and look at the City as a whole and move forward. Council has to look at the cost of the situation and determine which way is best for the City; to accept the agreement or to litigate. She agreed with Councilmember McArthur's comment that even though they think they should litigate the claim, they have to move forward and do what is right for the City. As Councilmember Kennedy commented, she too is torn in making the decision. She has to look at what is best for the City.

Councilmember Kennedy stated the elected officials have a burden of integrity but they also have to recognize that people who choose to serve as public employees have to have a higher level of integrity because they all answer to the community and the citizens. Council's job is about setting policy direction and being fiscally responsible and it is the responsibility of City Staff to ensure the policy directives are done in an environment that respects the individual and instills a sense of a higher duty. He is not convinced that this process will serve that interest.

Councilmember Chazen asked City Attorney Shaver if the agreement satisfied the release of the City from any further liability in this matter. City Attorney Shaver replied that the agreement as read is a very broad form of release which included any and all potential claims. So the answer to Councilmember Chazen's question was yes it does.

There were no other comments.

Councilmember Chazen moved to accept the resignation separation agreement as read by Councilmember Kennedy. Councilmember Boeschstein seconded the motion.

Councilmember McArthur offered an amendment to the motion to accept the resignation separation agreement as written and direct the Interim City Manager to execute the document on behalf of the City. Councilmembers Chazen and Boeschstein accepted the amendment of the motion. The motion passed by roll call vote 5 to 1 with Councilmember Kennedy voting NO.

Interim City Manager Moore advised Council that he will sign the agreement per their direction. He also stated that he did not participate in the actual settlement negotiations.

Adjournment

The meeting was adjourned at 2:35 p.m.

Stephanie Tuin, MMC
City Clerk