

TERMINAL LEAVE OF ABSENCE, RESIGNATION, AND MUTUAL RELEASE AGREEMENT

Between
John Bostwick
and
Cedar Falls, Iowa

This Terminal Leave of Absence, Resignation, and Mutual Release Agreement (hereinafter the "Agreement") is entered into by and between the City of Cedar Falls, Iowa (hereinafter the "City"), and John Bostwick (hereinafter "Bostwick"), employed by the City as the Fire Chief. For this Agreement to be binding, it must be approved by the City Council.

1. An investigation was conducted into discrepancies into the management of the Paid-On-Call firefighter program that was managed by Bostwick. It was determined that an employee failed to work the number of hours required by the program. Bostwick acknowledges the discrepancy, but did not receive any compensation or money that was not due him as the Fire Chief. To avoid any litigation regarding this matter, Bostwick irrevocably agrees to a terminal leave of absence during which time he will serve as an Administrative Consultant to Cedar Falls Fire Rescue, effective Feb. 1, 2023 and will officially retire from his position effective at the end of the day on October 15, 2023. The City has accepted this retirement date.
2. Based upon the consideration contained in Paragraph 3, Bostwick agrees with the following:
 - a) Bostwick will return all property of the City.
 - b) Upon complete execution of this Agreement, Bostwick agrees to perform the duties of Administrative Consultant as defined in c) – d).
 - c) In the role of "Administrative Consultant," Bostwick agrees to field calls from Fire Rescue personnel or assist on a consultation basis with other Fire Rescue Operation issues on an as-needed and remote basis. He further agrees to be available for calls Monday through Friday, between the hours of 8 a.m. and 5 p.m. He would not be required to be physically present in the City unless he is called upon to attend a pre-arranged meeting.
 - d) Bostwick will be allowed to meet with Fire Rescue personnel onsite if requested, but will not be issued a proximity card to any city building unless the requirements and scope of the "Administrative Consultant" role require it as deemed by the City.
 - e) Bostwick will not seek re-employment with the City in any capacity, except in an elected position.

3. In return for agreeing to the terms described in Paragraph 1, and agreeing to this release and fulfilling the terms of this Agreement, the City will provide Bostwick with the following benefits:

- (a) Bostwick shall remain on the payroll and continue to be paid his regular salary through October 15, 2023 (the “terminal leave of absence period”). The salary payments received during the terminal leave of absence period shall be made on the regular paydays and be reduced by all applicable payroll taxes and deductions, including FSA and HRA contributions, 457(b) Employee Contribution Plan contributions and MFPRSI DROP contributions. The City further agrees to continue making its MFPRSI DROP contributions during the terminal leave of absence period. The terminal leave of absence pay will be based upon Bostwick’s current salary in effect upon execution of this Agreement. The City makes no representations or guarantees regarding the effect of this Agreement on Bostwick’s entitlement to MFPRSI DROP benefits.
- (b) Health insurance benefits shall continue through October 15, 2023 and Bostwick’s contribution, if any, towards these benefits shall be deducted from his paycheck.
- (c) Bostwick will retain any and all rights to health insurance as provided for by state or federal law after October 15, 2023. This insurance will be at Bostwick’s personal expense.
- (d) Accrual of any paid leave shall cease on February 1, 2023. Bostwick shall be paid for all accrued but unused paid leaves pursuant to the provisions of the City personnel policies. This payment shall be reduced by all applicable payroll taxes and deductions and shall be paid in his last paycheck that is issued after October 15, 2023, with the exception of the 3-Year Catch-Up Provisions (457(b) plan) that is a tax-free deferral in 2023. All remaining paid leave not deferred into the 457(b) Employee Contribution Plan beyond the 3-Year Catch-Up provisions will be taxed.

4. It is understood and agreed that Bostwick is not entitled to receive any compensation from the City other than as set forth in Paragraph 3 of this Agreement.

5. In consideration of this Agreement, and except as otherwise provided herein, Bostwick fully and forever releases and discharges the City, and its elected officials, directors, officers, employees, agents, trustees, administrators, consultants, contractors, and attorneys, whether past, present, or future, and all predecessors, successors, and assigns thereof from any and all claims, demands, agreements, causes of action, injunctions, and restraints or liabilities of whatever kind, whether in law, equity, or otherwise, and whether now known or with reasonable diligence could have been known, including but not limited to, claims, liabilities, or causes of action relating to or arising out of Bostwick’s recruitment, hiring, employment, or separation from employment with the City, such as (by way of example only) claims under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et. seq., Title VII

of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000 et seq., The Civil Rights Act of 1991, the Americans With Disabilities Act, 42 U.S.C. §§12181-12189, The Employee Retirement Income Security Act of 1974, as amended, the Iowa Civil Rights Act, as amended, Iowa Code §§216 et seq., Iowa Code §70A.28, the Iowa Wage Payment Collection Law, Iowa Code §91A, claims under any local rule, state or federal statute, claims under common-law, claims for breach of contract, claims for any tort, claims for any wrongful discharge, or any other claims which could have been, but have not been asserted. Bostwick is not releasing any claims that cannot be released as a matter of law, or any claim based on a breach of this Agreement. In consideration of this Agreement, and except as otherwise provided herein, the City fully and forever releases and discharges Bostwick, his heirs, successors, assigns, attorneys, and representatives from any and all claims, demands, agreements, causes of action, injunctions, restraints, and liabilities of whatever kind, whether in law, equity, or otherwise, and whether now known or with reasonable diligence could have been known, including but not limited to, claims, liabilities, or causes of action relating to or arising out of Bostwick's recruitment, hiring, employment, or separation from employment with the City. The City is not releasing any claim that cannot be released as a matter of law, or any claim based on a breach of this Agreement.

6. Special Provisions for Age Discrimination. In addition to the provisions contained herein, and by execution of this document, Bostwick expressly waives any and all rights to claims arising under the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended by the Older Worker Benefit Protections Act, and:

- a) Bostwick acknowledges that his waiver of rights or claims arising under the ADEA is in writing, written in a manner calculated to be understood, and is understood by him.
- b) Bostwick expressly understands that this waiver refers to rights or claims arising under the ADEA, as amended.
- c) Bostwick expressly understands that by execution of this document, he does not waive any ADEA rights or claims that may arise after the date this Agreement is executed.
- d) Bostwick acknowledges that the waiver of his rights on claims arising under the ADEA, as amended, is in exchange for the consideration outlined above, which is above and beyond that to which he is otherwise entitled to receive from the City.

7. Bostwick agrees not to sue or to institute or cause to be instituted any kind of claim or action in any federal, state, or local agency or court against the City or the individuals referenced in paragraph 5, arising out of or attributable to Bostwick's employment, or separation from employment with the City, or any other action or cause of action released above, except to enforce the terms of this agreement. The City agrees not to sue or to institute or cause to be instituted any kind of claim or action in any federal, state, or local agency or court against Bostwick arising out of or attributable to Bostwick's employment, or separation of employment with the City, or any other action or cause of action released above, except to enforce the terms of this agreement.

8. Bostwick warrants and represents that he has neither made nor suffered to be made any assignment or transfer of any right, claim, demand, or cause of action covered by the above release or covenant not to sue and that Bostwick is the sole and absolute owner of all thereof and that Bostwick has not filed nor suffered to be filed on his behalf any claim, action, demand, or other matter of any kind covered by the above release or covenant not to sue as of the date and time of the execution of this Agreement.

9. The provisions of this Agreement shall be construed in accordance with the laws of the State of Iowa including the provisions of Iowa Code Chapter 22.

10. In the event that any paragraph, subparagraph, or provision of this Agreement shall be determined to be contrary to governing law or otherwise unenforceable, all remaining portions of this Agreement shall be enforced to the maximum extent permitted by law; the unenforceable paragraph, subparagraph, or provision shall first be construed or interpreted, if possible, to render it enforceable, and, if that is not possible, then the provision shall be severed and disregarded, and the remainder of this Agreement shall be enforced to the maximum extent permitted by law.

11. The Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the parties to it, their heirs, executors, administrators, successors, and assigns.

12. Bostwick further acknowledges that he has been advised of his right to consult an attorney prior to signing this Agreement, and in fact, has consulted an attorney. Bostwick signs this agreement knowingly and voluntarily and solely in reliance upon his own knowledge, belief, and judgment and not upon representations made by the City or others on its behalf.

13. Bostwick acknowledges that he received a copy of this Agreement on January 31, 2023 and that he was given up to twenty-one (21) days to consider this Agreement. If Bostwick is still considering this Agreement after February 1, 2023, Bostwick will be required to use vacation time to maintain his paid status.

14. Following the date of the full execution of this Agreement, Bostwick shall have seven (7) days to revoke the Agreement, and this Agreement shall not be effective until this seven (7) day period has expired. If Bostwick chooses to revoke this Agreement, he shall serve notice of such in writing to the Public Safety Director.

**CAUTION: READ CAREFULLY!
THIS TERMINAL LEAVE OF ABSENCE, RESIGNATION, AND
MUTUAL RELEASE AGREEMENT INCLUDES A RELEASE OF ALL CLAIMS!**

FOR THE CITY:

By: _____
Rob Green, Mayor

Date: _____

FOR THE EMPLOYEE:

By: _____
John Bostwick

Date: 1/31/2023