

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter “Agreement”) is entered into by and between Russell J. Myhre and Myhre Law Office, P.C. (hereinafter collectively referred to as “Myhre”), 341 Central Avenue, Suite 3, Valley City, North Dakota 58072; and the City of Valley City, North Dakota, a duly organized municipal corporation organized pursuant to the laws of the State of North Dakota, and its present and former officers, employees, commissioners, agents, attorneys, and insurers, and any of them, whether in their individuals or official capacity (hereinafter referred to as “City”).

RECITALS

1. Russell J. Myhre and Myhre Law Office, P.C., was appointed as the City Attorney of the City on August 15, 2011, pursuant to an Agreement for Legal Services dated June 7, 2011, a copy of which is attached hereto and incorporated herein as “Exhibit 1,” and has served as the City’s city attorney, pursuant to such Agreement as an appointee pursuant to Sections 40-15-05(3), 40—15-05, and 34-11.1-01(3), North Dakota Century Code, and Section 2-7, Revised Ordinances of the City of Valley City, North Dakota.
2. On January 25, 2016, Myhre, together with the City Administrator, the Chief of Police, and a lieutenant in the Valley City Police Department filed a Grievance against the former Mayor of the City, in which Myhre alleged that he was being subjected to a hostile and abusive work environment. A copy of Myhre’s Grievance is attached hereto and incorporated herein as “Exhibit 2”.
3. The City retained Attorney Patricia R. Monson of Fargo, North Dakota, to conduct an investigation of the said Grievances and to make a Report to the City. This Report was submitted to the City and was adopted by motion by the City Commission at its regular Commission meeting on December 6, 2016. A copy of Monson’s Report of Investigation is attached hereto and incorporated herein as “Exhibit 3.”
4. Monson’s Report of Investigation, at Pages 4 and 18, states as follows:

I found Attorney Myhre to be a credible witness who provided an objective account to this investigator of the circumstances that occurred on November 24, 2015 which was corroborated by other witnesses in the room that day or in close proximity to the Commission Chambers when the events occurred. I find that his grievances against the Mayor have merit....My findings, with respect to these grievances against Mayor Werkhoven, are that the facts substantiate violations of the City’s Leadership Code and the Employee Policy and Practice Manual, Section 7.7. Harassment and Discrimination....

This Final Report of Investigation was submitted to the City for further action.

5. The Valley City Commission has not acted upon Attorney Monson's Report of Investigation submitted to them on or about May 17, 2016.
6. The Valley City Commission has not acted upon the Grievance of Myhre.
7. Myhre and the City desire to fully and finally settle all claims related to the actions described in the foregoing paragraphs and related to Myhre's employment with the City.
8. Myhre has alleged damages as a result of the hostile and abusive work environment, and Myhre and the City desire to enter into a severance agreement related to Myhre's appointment as City Attorney.
9. The parties hereto understand this Agreement settles all claims against the other, whether known or unknown, related to Myhre's term as City Attorney.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Myhre agree as follows:

1. Mutual General Release and Discharge. In consideration for the payment described in Section 3 and all other terms of this Agreement, as set forth herein, the parties for themselves and their heirs, administrators, personal representatives, legal representatives, officers, staff, agents, assigns and successors, and each of them, hereby completely releases and forever discharges each other, including present and former officers, employees, commissioners, agents, attorneys, and insurers of the City, and each of the foregoing persons, heirs, assigns, administrators and successors, or any of the, of and from any and all liabilities, claims, demands, obligations, actions, causes of action, rights, damages, costs, interest, expenses, and compensation of any nature whatsoever, whether or not now known or contemplated, whether based on a tort, contract, or any other theory of recovery under the Constitution of the United States, the Constitution of the State of North Dakota, any Federal statute or Federal law or regulation, any law of the State of North Dakota, or any other theory of recovery which either Myhre or the City may have against the other, or which arose out of conditions of employment, or which is in any way connected with Myhre's term of appointment with the City from the beginning of time to the Effective Date of this Agreement.

Myhre understands that by releasing any and all legal claims against the City, he is releasing all of his rights to bring any claims against the City based on any actions, decisions, or events occurring through the date of his signing this Agreement, including claims related to the terms and conditions of his employment and appointment. Myhre's release includes any claims based upon:

- A. Federal, state or local employment discrimination laws, regulations, or requirements, including but not limited to North Dakota state law; Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 200e, et. seq.); 42 U.S.C. § 1981; the Age Discrimination in Employment Act (29 U.S.C. § 621, et. seq.); the Family Medical Leave Act (29 U.S.C. § 2611, et. seq.); the

Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.); the Fair Labor Standards Act (29 U.S.C. § 20 et. seq.); the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. § 1001 et. seq.); violation of public policy, invasion of privacy, and whistle blower action;

- B. Fiduciary and other claims under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et.seq., if applicable;
- C. Any other statute, ordinance, or regulation;
- D. Any contract, quasi-contract, or promissory estoppel;
- E. Any tort, including wrongful discharge, misrepresentation, fraud, infliction of emotional distress, or defamation; or
- F. Any other theory, whether developed or undeveloped.

In consideration of the consideration provided to Myhre herein, he agrees to waive and release and promises never to assert any such claims, even if he does not believe that he has such claims. He understands and agrees that claims or facts in addition to or different from those which are now known or believed by him to exist may hereafter be discovered, but it is his intention to release all claims he may have against the parties set forth above. It is his intent that his release apply to all known or unknown claims and he specifically waives the benefits and/or protections of N.D.C.C. §§ 9-13-02, 51-07-09, and similar laws.

Notwithstanding the forgoing, nothing shall be construed to prohibit Myhre from filing a claim with the Equal Employment Opportunity Commission. However, Myhre's release contained in this Section includes a release of his right to file a court action or to seek individual remedies or damages in any Equal Employment Opportunity filed court action, and Myhre's release of these rights shall apply with full force and effect to any proceedings arising from or relating to such a charge. Myhre further agrees that he will not institute any claims for damages by way of administrative or legal proceedings against the City. Myhre also waives the right to money damages or other legal or equitable relief awarded by any governmental agency related to any such claim.

The City and its present and former officers, employees, commissioners, agents, attorneys, and insurers release Myhre from any and all liabilities, claims, demands, obligations, actions, causes of action, rights, damages, costs, interest, expenses, and compensation of any nature whatsoever, whether or not now known or contemplated, whether based on a tort, contract, or any other theory of recovery under the Constitution of the United States, the Constitution of the State of North Dakota, or any other theory of recovery which the City now has, or which arose out of conditions of employment and retention with the City from the beginning of time to the Effective Date of this Agreement.

This Agreement shall be fully and completely binding and a complete settlement between Myhre, the City, and their respective heirs, executors, administrators, personal representatives, legal representatives, assigns, and successors. It is the intention of all parties that with the execution of this Agreement, the City and Myhre will be absolutely,

unconditionally, and forever released from all claims and obligations related to the matters discharged herein.

Notwithstanding the foregoing, this release does not release Myhre from any claims that may arise out of his continued provision of legal services to the City.

2. Resignation of City Employment. Myhre's relationships, agreements, and contracts with the City, including but not limited to the Agreement for Legal Services, as well as any obligations of the City pursuant to contracts or agreements which are not specified herein, shall end June 30, 2017, unless there arises grounds to terminate such appointment before the for cause pursuant to Sec5tion 40-15-05, North Dakota Century Code and the Agreement for Legal Services. Except as otherwise provided in this Agreement, all benefits and privileges of employment shall end as of the close of business on that date, except as specifically provided in this Agreement.
3. Payment. In connection with Myhre's resignation, the City will pay to Myhre severance and settlement in the amount of One Hundred Fifty Thousand Dollars (\$150,000) in two (2) equal payments. The first payment of Seventy-Five Thousand Dollars (\$75,000) shall be paid to Myhre on or before December 31, 2016; and the final payment of Seventy-Five Thousand Dollars (\$75,000) shall be paid within one hundred eighty (180) days from the approval of this Agreement by the Board of City Commissioners.

Myhre shall sign this Agreement upon the approval of this Agreement by the Board of City Commissioners.

Absent grounds to terminate for cause, Myhre shall continue to provide legal services as provided in the Agreement for Legal Services with the City until June 30, 2017, and shall be paid according to the terms of the Agreement for Legal Services.

Myhre shall also cooperate with any successor city attorney who may be chosen to act as City Attorney; shall transfer all City files and records to the City and/or the successor city attorney; and shall provide advice and counsel to any successor city attorney. It is the intention of the parties that the transition from one city attorney to the successor city attorney shall occur as seamlessly and expeditiously as possible.

These payments and the performance of these contractual obligations shall constitute full and complete discharge of the duties and responsibilities of the parties to each other upon the termination of this Agreement and upon the underlying agreement for services.

It is agreed by the parties that, as set out in the Agreement for Legal Services, since Myhre was acting as a part time appointee and independent contractor to the City, he is not entitled to any retirement benefits, vacation or sick leave, Consolidated Omnibus Budget Reconciliation Act (COBRA), group life insurance coverage, or other benefits offered to full time City employees or appointees.

4. Acceptance Period. The terms of this Agreement will be open for acceptance by Myhre for a period of twenty-one (21) days, or Myhre may in writing waive them. During that time, Myhre may consider whether or not to accept this Agreement and may consult with his counsel to advise him regarding the same. Myhre agrees that changes to this Agreement, whether material or immaterial, will not restart this acceptance period.
5. No Disparagement. The parties mutually understand and agree this Agreement is in their mutual best interests. Both parties agree that they will not disparage the other.
6. Right to Rescind or Revoke. The parties have agreed to allow Myhre the right to revoke this Agreement insofar as it extends to potential claims under the Age Discrimination in Employment Act by informing the City of his intent to revoke this Agreement within seven (7) calendar days following his execution of it. To be effective, any such rescission must be in writing and hand-delivered to Avis Richter, City Auditor and Chief Financial Officer, at City Hall, 254 2nd Ave NE, Valley City, ND 58072; or if sent by mail, postmarked within the applicable time period, sent by certified mail, return receipt requested, to the same address. Myhre agrees that if he exercises any right of rescission or revocation, the City may, at its option, either nullify this Agreement in its entirety, or keep it in effect as to all claims not rescinded or revoked in accordance with the rescission or revocation provisions of this Agreement. In the event the City opts to nullify the entire Agreement, neither Myhre nor the City will have any rights or obligations whatsoever under this Agreement. The payments specified in Section 3 shall be paid as set forth therein.
7. Communication to Others. The parties agree to have no communication with the media over Myhre's resignation from the City other than the fact Myhre has resigned according to the terms of this Agreement under mutually amicable circumstances. Both parties agree not to post and/or provide any responsive information regarding the other on any blog, chat site, social media site, or other paper or electronic means of communication, or have anyone on their behalf post and/or provide information on any blog, chat site, social media site, or other paper or electronic means of communication.
8. Non-Admission of Liability. This Agreement is a severance agreement and is intended to include the compromise of disputed claims, if any, and no actions taken by the parties, either previously or in connection with this Agreement, shall be deemed or construed to be an admission of any matter or of any liability.
9. Effective Date. This Agreement does not become effective until Myhre signs a written waiver or the time period for rescinding or revoking this Agreement expires.
10. Return of City Property. Myhre will return all City property which is in his possession prior to the end of one hundred eighty (180) days, including files, digital tablets, or other property.

11. Agreement Regarding No Right to Future Employment. Myhre agrees that he will not at any time in the future bring a claim against the City for any failure to offer him future employment or failure to accept from him an application for future employment with the City.
12. Governing Law/Severability. This Agreement shall be governed by the laws of the State of North Dakota. If any part of this Agreement is construed to be in violation of any law, such part shall be modified to achieve the objective of the parties to the fullest extent permitted and the balance of this Agreement shall remain in full force and effect.
13. No Assignment. This Agreement is personal to Myhre and may not be assigned by Myhre. The payments provided to Myhre shall be made to Myhre's estate in the event of Myhre's death prior to Myhre receiving receipt therefor.
14. Advice and Clarity. Myhre acknowledges and states that he has read this Agreement and has been advised to consult an attorney prior to signing this Agreement. The City also acknowledges and states that it, and its officers and Commissioners, have read this Agreement and have been advised to consult outside, independent counsel prior to signing this Agreement.

Myhre further represents that this Agreement is written in language that is understandable to him and that he fully appreciates the meaning of its terms and that he enters into this Agreement fully and voluntarily. This Agreement has been negotiated by the parties. Myhre warrants, represents, and agrees that he is not relying on the advice of the City or its counsel, or anyone associated with them as to the legal and income tax or other consequences of any kind arising out of the Agreement. Myhre further represents that at the time of entering into this Agreement he is competent and not under any medication which would adversely affect or impair his mental abilities or respective abilities to comprehend the terms of this Agreement. Myhre represents there was no coercion, duress, or other unlawful influence which caused him to enter into this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be one and the same instrument.
16. Entire Agreement. Myhre agrees that this Agreement constitutes the entire understanding between Myhre and the City with respect to Myhre's resignation, and that there are no other promises or understandings with respect to Myhre's resignation. Any modification of or addition to this Agreement must be in writing and signed by Myhre and the City.

IN WITNESS WHEREOF, the parties have executed this Agreement by their signatures, below.

Dated:

Dated:

Russell J. Myhre

City of Valley City
By: Dave Carlsrud
President, Board of City Commissioners

Avis Richter, City Auditor

APPROVED AS TO FORM:

Joseph F. Larson II, I.D. # 03229
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Special Counsel
Attorney at Law
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WAIVER OF TIME TO REVIEW

I, Russell J. Myhre, individually and as President of Myhre Law Office, P.C., understand that I may take up to two (2) days from receipt of the Settlement Agreement and Release to review the document, above, and determine whether to accept it. Thereby knowingly and voluntarily, I waive any time to review this Agreement. I acknowledge and understand that this Waiver of part of the Severance Agreement and Mutual Release between myself and the City, and as such includes all rights and claims arising prior to or on the effective date of the Agreement.

Prior to executing this Waiver and the Settlement Agreement and Release, I acknowledge that I have had an opportunity to consult with an attorney and I fully understand the terms of this Waiver and Agreement. I have not been compelled into signing it by anyone associated with the City, and I have entered into the Agreement and Waiver voluntarily and of my own free will.

Dated:

Russell J. Myhre