

## **RESIGNATION AGREEMENT AND RELEASE OF CLAIMS**

This Resignation Agreement and Release of Claims ("Agreement") is made and entered into as of the date indicated below between the City of Prior Lake, including its elected officials, administrators, and employees (collectively "the City"), and Mark Elliott ("Elliott"). Elliott and the City are sometimes referred to collectively as the "Parties" to this Agreement.

The City and Elliott wish to provide for Elliott's voluntary resignation and the separation of their employment relationship and all agreements that may have existed between them and to fully and finally resolve any and all disputes arising out of Elliott's employment by the City or the separation of that employment, without any admission of any kind by either party.

Therefore, in consideration of the mutual promises and agreements set forth in this Agreement, the City and Elliott agree as follows:

### **I. EMPLOYMENT SEPARATION.**

Elliott's voluntary resignation shall be effective Monday, December 3, 2018. ("Separation Date"), and Elliott shall be terminated from all active employment on that date.

### **II. CONSIDERATION.**

In exchange for the General Waiver and Release of Claims set forth in Section III, and subject to the other terms and conditions of this Agreement, the City agrees to provide Elliott with the compensation and benefits set forth in this Section II ("Consideration").

- A. The City will provide Elliott with severance pay in an amount totaling \$54,428.08 gross.
- B. The City will pay Elliott for the balance of his accrued paid leave as follows:
  - i. 288.25 hours of vacation time (\$8,772.89 to be deposited in Elliott's Retirement Health Savings Account and \$8,772.89 to be paid in cash)
- C. The City will withhold from the compensation and benefits payable to Elliott under Sections IIA and IIB of this Agreement all appropriate deductions for employee benefits, if applicable, and the amounts necessary for the City to satisfy its withholding obligations under federal, state and local income and employment tax laws.
- D. The Parties acknowledge that the consideration provided in this Agreement is valuable consideration in exchange for this Agreement and the covenants contained herein, and includes payments and benefits to which the parties are not otherwise entitled. This consideration is provided by each party in exchange for

the covenants provided by the other party to this Agreement and in return for each party's agreement to release any claims that it might have against the other party.

### **III. MUTUAL WAIVER AND RELEASE.**

As a material inducement for the Parties to enter into this Agreement, and in consideration of the promises set forth in this Agreement, the Parties hereby knowingly and voluntarily release and forever discharge each other, and all respective affiliates, related entities, and assigns from any federal, state or local charges, claims, grievances, demands, actions, liabilities, suits, or causes of action, and any and all rights or claims to continued employment after the Separation Date, attorneys fees, damages (including contract, compensatory, punitive or liquidated damages) or equitable relief, which either of the Parties may ever have had, has now, or may ever have against the other, whether known or unknown, on account of or arising out of Elliott's employment with the City or the separation thereof.

This release includes, but is not limited to, any rights, claims or grievances that Elliott may have arising under the Title VII of the Civil Rights Act of 1964, Section 1983 of the Civil Rights Act of 1871, the Americans with Disabilities Act, the Age Discrimination in Employment Act ("ADEA"), the U.S. and Minnesota Constitutions, the Minnesota Human Rights Act ("MHRA"), the Minnesota Whistleblower Act, and any other federal, state or local human rights statute or ordinance, as well as any claims or rights of action relating to breach of contract, public policy, personal or emotional injury, defamation, additional compensation, or fringe benefits (the "Claims").

The Parties specifically waive the benefit of any statute or rule of law that, if applied to this Agreement, would otherwise exclude from its binding effect any claims not now known by the Parties to exist. This release does not purport to waive claims arising after the date of this Agreement.

This Agreement does not purport to limit any right Elliott may have to file a charge under Title VII, the ADEA, the ADA, GINA, or any other civil rights statute, or to participate in an investigation or proceeding conducted by the EEOC or other anti-discrimination agency. It is Elliott's intention, however, to release any right to recover damages under Title VII, the ADEA, the ADA, GINA, and other civil rights statutes arising out of or relating to the Claims.

### **IV. Period to Consider the Release; Voluntary and Knowing Release.**

Elliott understands that he has 21 days, from the day that he receives the Agreement, to consider whether he wishes to sign it. If he signs the Agreement before the end of the 21-day period, it will be his voluntary decision to do so because he has determined that he does not need any additional time to decide whether to sign.

Elliott understands and acknowledges that he has the right to consult with an attorney prior to signing this Agreement. Whether Elliott signs this Agreement, with or without consulting an attorney is his own voluntary decision.

Elliott has read this Agreement carefully and understands all of its terms. In signing this Agreement, Elliott has not relied on any statements or explanations made by the City except as specifically set forth in this Agreement.

**V. Right to Rescind and/or Revoke.**

Elliott understands that he has the right to revoke this Release insofar as it extends to potential claims under the ADEA by informing the City of his intent to revoke that portion of his release within seven (7) calendar days following his execution of the Agreement. Elliott further understands he has the right to revoke his release insofar as it extends to potential claims under the MHRA by informing the City of his intent to revoke that portion of his release within fifteen (15) calendar days following his execution of the Agreement.

Any such rescission must be in writing and sent by certified mail, return receipt requested, post-marked and addressed as follows:

- (a) post-marked within the applicable seven (7) or fifteen (15) day period;
- (b) properly addressed Frank Boyles, City Manager, City of Prior Lake, 4646 Dakota Street SE, Prior Lake, MN 55372

Elliott understands and 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. In the event the City opts to nullify the entire Agreement based on Elliott's rescission, neither the City nor Elliott will have any rights or obligations under the Agreement.

**VI. Non-Disparagement.**

The Parties to this Agreement agree that they will make no disparaging or defamatory comments concerning the other parties in any respect or concerning any aspect of their relationship, including but not limited to the events that precipitated the separation of Elliott's employment or the parties' negotiation of this Agreement. With respect to the City, the non-disparagement obligations contained this Section VI shall extend to the following employees only: Frank Boyles and Lori Olson.

**VII. MISCELLANEOUS PROVISIONS.**

**A. Non-Assignment of Claims.** The parties represent and warrant that they have not sold, assigned, or transferred to any third-party any obligation, covenant, or claim of any nature whatsoever relating to any matter covered by this Agreement.

**B. Successors.** This Agreement shall be binding on, enforceable by, and inure to the benefit of Elliott's personal or legal representatives, but neither this Agreement nor any rights or payments arising hereunder may be otherwise assigned or pledged by the parties.

C. **Non-Admission.** The parties expressly deny any and all liability or wrongdoing and agree that nothing in this Agreement shall be deemed to represent any concession or admission of liability or wrongdoing or any waiver of any defense.

E. **Amendment.** Any amendment to this Agreement shall be made in writing and signed by the parties.

F. **Waiver.** No right arising out of this Agreement can be waived unless the waiver is in writing signed by the party to be bound by such waiver. A waiver of a breach or default of any provision of this Agreement shall not be deemed a waiver of future compliance.

G. **Entire Agreement.** The City and Elliott each represent and warrant that no promise or inducement has been offered or made except as set forth or referenced above and that the consideration stated is the sole consideration for this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

MARK ELLIOTT

  
\_\_\_\_\_

Date:

12/03/2018

CITY OF PRIOR LAKE

By:

Its:

Date:

  
\_\_\_\_\_  
City Manager  
12.3.2018