



## **CITY COUNCIL MEETING AGENDA**

### **December 23, 2010 - 5:30 PM**

### **City Hall Council Chambers**

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The Moorhead City Council welcomes and encourages public input on issues listed on the agenda or of general community interest, time and Council permitting. Speakers are limited to 3-minute presentations. Advertised public hearings are scheduled so that the public is afforded an opportunity to speak. Public hearings are generally scheduled 15 to 30 minutes after the start of the meeting; however the starting time may vary depending on other scheduled agenda items. Citizens wishing to address the Mayor and Council regarding a specific agenda item, other than public hearings, will be afforded an opportunity during the discussion of that item. Citizens wishing to speak on matters not listed on the agenda will be afforded the opportunity to do so under the heading "Citizens Addressing the Council," usually scheduled at the beginning and end of the agenda. Each person requesting the opportunity to speak is asked to fill out a "Request to Speak Form."

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#### **City Council Meeting**

1. Consideration of Proposed Settlement and Release Agreement  
between City of Moorhead, Minnesota and Joel Hewitt \_\_\_\_\_

Upon request, accommodations for individuals with disabilities, language barriers, or other needs to allow participation in City Council meetings will be provided. To arrange assistance, call the City Clerk's office at 218.299.5166 (voice) or 711 (TDD/TTY).

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**SEPARATION AND RELEASE AGREEMENT BETWEEN  
CITY OF MOORHEAD, MINNESOTA AND JOEL HEWITT**

This Separation and Release Agreement (“Agreement”) is made and entered into by and between the City of Moorhead, Minnesota (hereinafter the “City”), a municipal corporation, and Joel Hewitt.

**Recitals**

WHEREAS, Joel Hewitt has been employed by the City since July 1, 2004 as its Fire Chief;

WHEREAS, the City commenced a civil, employment investigation into complaints made against Mr. Hewitt;

WHEREAS, Joel Hewitt denies the complaints in their entirety;

WHEREAS, the parties hereto desire to resolve and to avoid significant time, expense and risks of prosecuting any legal action that Joel Hewitt may initiate against the City or employment action that the City may pursue against Joel Hewitt; and

WHEREAS, the parties hereto have determined that it is in the best interests of all parties that Joel Hewitt separate from employment with the City by mutual agreement in accordance with the terms and conditions set forth below in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements to be performed, as hereinafter set forth, the City and Joel Hewitt agree as follows:

**Article 1. Voluntary Resignation**

Joel Hewitt voluntarily resigns from employment with the City, effective January 3, 2011, which will be Joel Hewitt’s last day of employment with the City (hereinafter “Separation Date”).

**Article 2. Consideration**

**Section 2.1. Resignation, Retirement and Payment**

In consideration for the voluntary resignation described in Article 1 and the waiver and release described in Article 3 of this Agreement, the City will do the following: (1) deem Joel Hewitt as providing sufficient notice of his resignation under the City’s practices, policies, rules and regulations regarding such notice; (2) deem Joel Hewitt as leaving City employment due to retirement; (3) pay Mr. Hewitt his accumulated vacation leave at his rate of pay on the Separation Date; and (4) pay Mr. Hewitt one-half of his accumulated sick leave at his rate of pay on the Separation Date, which will be paid to Employee by payroll on the first payroll after January 3, 2011 and subject to normal withholdings.

## **Section 2.2. Other Payments**

The consideration in Section 2.1 is in addition to the following actions the City will take: (1) provide salary and benefits to Joel Hewitt through January 3, 2011 at the same level as provided to Joel Hewitt as of the date this Agreement is executed, subject to the practices, policies, rules and regulations for salary or benefits in effect for Joel Hewitt as of the date the agreement is executed; and (2) pay Joel Hewitt salary and benefits after January 3, 2011 as provided by or in the City's practices, policies, rules, regulations or practices in effect as of the date this Agreement is executed, which will be paid to Employee by payroll on the first payroll after January 3, 2011 and subject to normal withholdings.

## **Section 2.3. No Other Compensation or Benefits**

The compensation and benefits described in this Article are the full and final compensation and benefits for any and all claims arising out of Joel Hewitt's employment with the City. City will not provide Joel Hewitt any compensation or benefits other than those provided in sections 2.1 or 2.2 of this Agreement or as otherwise required by law.

## **Article 3. Joel Hewitt's Waiver and Release**

**Section 3.1.** Joel Hewitt knowingly and voluntarily waives his right to pursue and releases the City from any and all grievances, claims, demands, actions, hearings, liability, damages or rights of any kind, whether known or unknown, that he has asserted or may assert, directly arising out of or resulting from acts or occurrences that occur related to Joel Hewitt's employment with the City or separation therefrom, including, but not limited to, those grievances, claims, demands, actions, liability, damages or rights of any kind arising under the City's charter, ordinances or personnel policies, Veterans Preference Act, Minnesota Human Rights Act, Title VII of the Civil Rights Act, Family and Medical Leave Act ("FMLA"), Americans with Disabilities Act, Rehabilitation Act of 1973, Minnesota Workers' Compensation Act, Public Employment Labor Relations Act, Minnesota Occupational Health and Safety Act, Minnesota Whistleblower Act, Age Discrimination in Employment Act ("ADEA"), the Minnesota and federal Fair Labor Standards Acts ("FLSA"); Minnesota Government Data Practices Act, Minnesota Open Meeting Law and common law.

**Section 3.2.** The waiver and release in Section 3.1 of this article does not apply to the following: (1) rights under the FMLA, unless there is required involvement of the federal Department of Labor or a court of competent jurisdiction; (2) payment of unpaid overtime, unpaid minimum wage, and liquidated damages under the federal FLSA, unless there is required involvement of the federal Department of Labor or a court of competent jurisdiction; (3) rights to file a charge or participate in an investigation or

proceeding conducted by the Equal Employment Opportunity Commission (EEOC), but this does not exclude the waiver or release of the right to recover Joel Hewitt's relief including, but not limited to, back pay, front pay, reinstatement, attorneys' fees, and/or punitive damages, in any administrative or legal action whether brought by the EEOC or other civil rights enforcement agency, Joel Hewitt, or any other party; (4) rights to unemployment benefits or any other rights under the Minnesota Unemployment Insurance Law; (5) any claim for workers' compensation only to the extent such benefits are awarded by a state agency or agreed upon consistent with state law; (6) statutory rights, if any, to indemnification from City for claims brought against Joel Hewitt in his capacity as an employee or agent of City; (7) right under the Uniformed Services Employment and Reemployment Rights Act; (8) rights under the Consolidated Omnibus Reconciliation Act of 1985, as amended; (9) right to challenge the knowing and voluntary nature of this Release under the ADEA; (10) right to assert claims that are based on events occurring after this Agreement becomes effective; and (11) any other right that can not be released by law.

**Article 4. No Further Actions on Investigation**

The City will not take any further actions related to investigations pending or concluded as of the date of this Agreement against Joel Hewitt.

**Article 5. Prohibition on Disclosing Certain Data**

Joel Hewitt will not release, discuss, or comment on the following data: (1) not public, nonpersonnel City of Moorhead data; or (2) private data that identifies other City of Moorhead employees.

**Article 6. Letter of Reference**

The City and Joel Hewitt will mutually agree on a neutral letter of reference after this Agreement is executed which the City will initially draft.

**Article 7. No Reemployment**

Following the Separation Date, Joel Hewitt is not entitled to any reinstatement or reemployment with the City.

**Article 8. Consideration and Rescission**

**Section 8.1.** Joel Hewitt has 21 days from the date he receives this Agreement in which to consider this Agreement pursuant to the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34.

**Section 8.2.** Joel Hewitt has the right to rescind the release of the claims set forth in Article 3 of this Agreement with regard to claims arising under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01-41, within 15 calendar days of execution of this Agreement, and with regard to his rights arising under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34, within 7 calendar days of execution of this Agreement. The two rescission periods shall run concurrently. In order to be effective, the rescission must:

- A. Be in writing;
- B. Be delivered to Michael J. Redlinger, City Manager, City of Moorhead, 500 Center Avenue, P.O. Box 779, Moorhead, MN 56561-0779; and
- C. If delivered by mail, the rescission must be postmarked within the required period, properly addressed to Mr. Redlinger, as set forth above, and sent by certified mail, return receipt requested.

If Joel Hewitt rescinds this Agreement in accordance with this article, he will not receive the payment(s) set forth in Section 2.1 of this Agreement and he will be obligated to return any payments and benefits if already received pursuant to Section 2.1 of the Agreement.

**Section 8.3.** Joel Hewitt and the City have the right to rescind or reject the payment set forth in Section 2.1 of this Agreement prior to 15 calendar days after the date that the City Council approves this Agreement.

## **Article 9. Entire Agreement**

This Agreement constitutes the entire agreement among the parties hereto. No representations, warranties, covenants, or inducements have been made to any party concerning this Agreement, other than the representations, covenants, or inducements contained and memorialized in this Agreement. This Agreement supersedes all prior negotiations and oral and written agreements and understandings with respect thereto.

## **Article 10. Amendment, Modification, or Termination**

This Agreement or any of its terms may only be amended, modified, or terminated by a written instrument signed by or on behalf of all of the parties hereto or their successors in interest.

## **Article 11. Governing Law and Severability**

**Section 11.1.** This Agreement is governed by the laws of the State of Minnesota, both as to interpretation and performance. The rule of construction of interpreting a contract against its drafter will not apply to this Agreement.

**Section 11.2.** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable by any branch of government with authority over such provision or portion thereof, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**Article 12. No Liability or Wrongdoing**

Neither the City or Joel Hewitt admits to any legal liability or violation of any contract or law, nor that it has engaged in any wrongdoing in this matter. Nothing in this Agreement shall be construed to be an admission by either the City or Joel Hewitt of any liability, violation or wrongdoing.

**Article 13. No Precedent or Past Practice**

This Agreement is solely for the purposes of resolving the matters described in this Agreement. The terms of this Agreement do not have any precedential value beyond this Agreement. Neither this Agreement nor its terms can be introduced, referred to, or in any other way utilized in any subsequent negotiations, mediation, arbitration, litigation, or administrative hearing, except as may be necessary to enforce its provisions and terms or as otherwise required by law.

**Article 14. Attorney's Fees, Costs, and Disbursements**

Each party is responsible for its/his attorney's fees, costs, and disbursements in reaching this Agreement and no party will seek an award of attorney's fees, costs, or disbursements against a party hereto incurred in reaching this Agreement.

**Article 15. Binding Effect and No Assignment**

This Agreement is binding upon, and inures, to the benefit of the successors, executors, assigns, heirs and legal representatives of the parties hereto. This Agreement is not assignable by any party. Any purported assignment by any party shall be null and void and not operate to relieve such party of its obligations hereunder.

**Article 16. Remedies**

In the event that Joel Hewitt breaches his obligations under this Agreement or the City learns that his representations and warranties contained in this Agreement are false, City shall have the right to bring a legal action for appropriate equitable relief, damages, and reasonable attorneys' fees, and shall also have the right to terminate Joel Hewitt and suspend payment of the compensation set forth in Section 2.1 of this Agreement and to recover, in addition to any equitable relief and damages allowed by law, payments Joel Hewitt has received under this Agreement.

**Article 17. Voluntary and Knowing Action**

Joel Hewitt acknowledges that: (1) he has read and understands the contents of this Agreement; (2) he has been given a fair opportunity to discuss and negotiate the terms of this Agreement; (3) he is advised to consult an attorney before signing this Agreement; (4) he retained an attorney who consulted with him on this Agreement before he signed it; (5) he agrees with the Agreement's provisions and is voluntarily and without duress entering into this Agreement; and (6) he has been given at least 21 days to consider this Agreement. If Joel Hewitt signs the Agreement before the expiration of the 21-day period, it is because he has decided voluntarily that he does not need any additional time to decide whether to sign the Agreement.

**Article 18. Execution and Effective Date**

This Agreement is not executed until the latest date affixed to the signatures on the following page. This Agreement will be effective upon the expiration of the 15-day periods provided in Sections 8.2 and 8.3 of this Agreement if it is not otherwise rescinded in accordance with those sections.

\_\_\_\_\_  
Joel Hewitt

Dated: \_\_\_\_\_

**Accepted on behalf of the City of Moorhead**

By: \_\_\_\_\_  
Its Mayor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its City Manager

Dated: \_\_\_\_\_