

April 30, 2014
City Commission Room, 700 N. Jefferson, Junction City KS 66441

Mayor Michael Ryan
Vice Mayor Mick McCallister
Commissioner Pat Landes
Commissioner Jim Sands
Commissioner Cecil Aska
Assistant City Manager Cheryl Beatty
City Attorney Catherine Logan
City Clerk Tyler Ficken

1. **12:00 P.M. - CALL TO ORDER**
2. **NEW BUSINESS:**
 - a. a. Consideration of City Manager Separation Agreement and Release.
3. **EXECUTIVE SESSION:**
 - a. Discussion of personnel matters of nonelected personnel and attorney client privilege.
4. **ADJOURNMENT:**

Backup material for agenda item:

- a. Consideration of City Manager Separation Agreement and Release.

SEPARATION AGREEMENT AND RELEASE

This SEPARATION AGREEMENT AND RELEASE (hereinafter referred to as the "Agreement") is made and entered into this 22nd day of April, 2014, by and between **Gerald C. Smith ("Smith")** and the **City of Junction City, Kansas ("City")**.

WHEREAS, Smith was employed with the City as City Manager; and

WHEREAS, Smith voluntarily resigns his position with the City effective April, 23, 2014; and

WHEREAS, the parties wish to resolve any and all issues regarding Smith's employment relationship with the City.

NOW THEREFORE in consideration of the premises and agreements set forth herein, the parties agree as follows:

1. Smith agrees and acknowledges that he will be paid his compensation through April 23, 2014, plus any accrued, unused benefits consistent with City policy.

2. The City agrees to pay Smith the sum of Fifty-Five Thousand Dollars (\$55,000.00), as separation pay which Smith acknowledges and agrees exceeds all amounts due and owing to him from the City, subject to applicable federal and state withholdings. The payment of the sum shall be in a single payment made after the expiration of the revocation period contained in paragraph 11.

3. Smith agrees and acknowledges he will return any and all City property (including any City information in electronic form) in his possession to the City, and retrieve any personal items no later than April 23, 2014. To the extent any information in electronic format is or has been maintained on any information systems owned or otherwise in the possession or control of Smith, including but not limited to personal computers, hand-held electronic communication devices (such as Blackberrys, iPhones or similar devices), or cellular telephones, Smith agrees and attests that he has taken or will take no later than April 23, 2014, appropriate affirmative measures to remove, delete and destroy any such information from such devices in a manner that makes him unable to retain, recall or restore it in the future.

4. Smith acknowledges that he has had access to and knows information relating to the City and its respective operations that is confidential because it was discussed in the City Commission's executive session. Smith acknowledges that he is obligated to continue to maintain the confidentiality of all discussions had in executive session. Such confidential information does not however include information in the public domain unless Smith has without authority made it public. Smith further agrees that he will not use confidential information for personal benefit or the benefit of any other person.

5. The parties acknowledge that irreparable damage will result to the City from any violation by Smith of paragraph 4, which is agreed by the parties to be material provisions of this Agreement. It would be difficult or impossible to calculate and ascertain

accurately and definitively the damages that would be sustained by the City as a result of a breach of those provisions by Smith. Accordingly, in addition to any and all other remedies available to the City for any such violation, the City shall have the remedies of restraining order and injunction and any such other equitable relief as may be declared or issued by a court to enforce the provisions of those provisions of this Agreement, without posting any bond that might be required, and Smith agrees not to claim in any such proceeding that a remedy at law is available to the City. The existence of any claim or any cause of action by either party against the other, other than the failure of the City to make the payments pursuant to numbered paragraphs 1 and 2 above; whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the City of paragraph 4 of this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, if the provisions contained in paragraph 4 shall for any reason be held to be excessively broad as to duration, activity or subject, such provision shall be construed by limiting and reducing it so as to be enforceable to the extent compatible with the applicable law and such jurisdiction as it shall then exist. Smith agrees to reimburse the City for any and all expenses incurred by the City, including attorney fees, expenses and court costs in connection with the successful enforcement of paragraph 4 of this Agreement.

6. In exchange for the payments and benefits recited above which Smith acknowledges includes and exceeds any amounts or benefits currently due and owing to him under his employment contract with the City, as well as the City's policies, procedures, and benefits, Smith agrees to release the City, its Commissioners, employees, insurers and attorneys (the "Released Parties") from any and all claims that Smith might have had or may have against them arising from or related to his employment with the City, including without limitation, Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Acts of 1991, the Employee Retirement Income Security Act of 1974 as amended, the Americans with Disabilities Act, the Americans with Disabilities Act Amendment Act, the Genetic Information Nondiscrimination Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, and any other state or local statute or ordinance dealing with civil rights and discrimination on the basis of race, color, national origin, sex, religion, age, disability or retaliation, and any claim of express or implied contract, defamation, invasion of privacy, breach of any covenant of good faith and fair dealing, wrongful discharge, intentional infliction of emotional distress, fraud, promissory estoppel or any other common law or statutory claim, including claims for costs and attorneys fees which Smith might have, whether known or unknown, which arises from or is related to his employment with the City as of the date of this Agreement.

7. Smith acknowledges that this Agreement and its provisions are not an admission of liability or any wrongdoing or discrimination by the City or any of its Commissioners or employees.

8. When faced with an employment inquiry regarding Smith from a potential employer, the City will provide a neutral reference confirming Smith's dates of employment, job title, job duties, and salary along with a statement that the reference is provided under a standard policy for the City and all former employees.

9. The City agrees not to contest claims for unemployment compensation brought by Smith.

10. Smith acknowledges that he has been informed that he has twenty-one (21) days from the date this Agreement is presented in which to accept or reject its terms, but that he may, if he chooses, accept or reject its terms at any time prior to the expiration of the twenty-one (21) day period.

11. Smith acknowledges that by signing this Agreement he has accepted its terms and that he will have seven (7) calendar days after the date he signs this Agreement to revoke his acceptance of its terms. Such revocation to be effective must be delivered by written notice of revocation (which may be accomplished by facsimile transmission) to Tyler Ficken, City Clerk, 700 N. Jefferson, Junction City, Kansas 66441, with a copy to Catherine Logan, City Attorney, Lathrop & Gage LLP, 10851 Mastin Boulevard, Suite 1000, Overland Park, Kansas 66210 no later than the 7th day after this Agreement has been signed by him and if that day should fall on a weekend or legal holiday then no later than the first business day after the weekend or holiday period. The effective date of this Agreement is the 8th day after the Agreement is signed prior to which no revocation is received by the City.

12. Smith acknowledges that he has been advised by the City to seek the assistance of counsel prior to executing this Agreement, that he understands fully the implication and effect of each of its terms and that by signing this Agreement he is releasing forever any claims, he has or might have, against the City which arise from or relate in any way to his employment with the City. Smith further acknowledges that there have been no other inducements or representations concerning this Agreement and that he is entering into this Agreement of his own free will and without any coercion or pressure from anyone.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

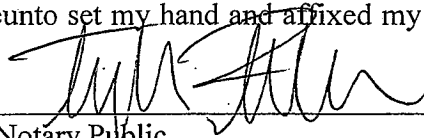
I, GERALD C. SMITH, HAVE FULLY INFORMED MYSELF OF THE CONTENTS AND MEANING OF THIS SEPARATION AGREEMENT AND RELEASE. I HAVE READ AND FULLY UNDERSTAND THIS SEPARATION AGREEMENT AND RELEASE. I FURTHER UNDERSTAND THAT THIS IS A COMPLETE AND FINAL RELEASE OF ALL CLAIMS AGAINST THE RELEASED PARTIES.


GERALD C. SMITH

STATE OF Kansas)
) ss.
COUNTY OF Geary)

On this 22nd day of April, 2014, before me a Notary Public, appeared Gerald C. Smith known to be the person described herein and who executed the foregoing Separation Agreement and Release, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Notary Public

My commission expires:

7-6-2017



CITY OF JUNCTION CITY, KANSAS

Name: _____
Title: _____