



Legal Department

DATE: March 26, 2024

FROM: Jannelle Combs, City Attorney

ITEM: Consider approval of Agreement and Mutual Release of All Claims with Charlie Jeske

REQUEST:

Consider approval of Agreement and Mutual Release of All Claims with Charlie Jeske.

BACKGROUND INFORMATION:

Attorney Brian Schmidt has negotiated an Agreement and Mutual Release of All Claims with Charlie Jeske and his attorney within the negotiation parameters he was authorized by the City Commission. This would be the only document signed, and if signed by Mr. Jeske, his retirement date would be 7 days from his signature which is April 2, 2024. The delay is due to the employee fitting within the Older Workers Benefit Protection Act, which is a federal law. He could revoke his signature within 7 days of signing the settlement. Attorney Schmidt will attempt to be present at the meeting to answer any questions as he is counsel for this matter.

RECOMMENDED CITY COMMISSION ACTION:

Consider approval of Agreement and Mutual Release of All Claims with Charlie Jeske.

STAFF CONTACT INFORMATION:

Jannelle Combs, City Attorney, 701-355-1342, jcombs@bismarcknd.gov

ATTACHMENTS:

None

AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Agreement and Mutual Release of All Claims (“Agreement”) is made this _____ day of March, 2024, between Charles Jeske and the City of Bismarck, each a party and collectively referred to as “the Parties.” This Agreement shall become effective 7 days after it is fully executed provided it is not revoked in accordance with Paragraph 7(D)(vii) of this Agreement (“Effective Date”). The Parties have entered into this Agreement for the purpose of governing the terms of Charles Jeske’s employment. The Parties agree to the following terms:

1. Jeske has been employed by the City of Bismarck since 2008 as the Director of the Bismarck Event Center (f/k/a Civic Center).
2. A dispute arose over whether Jeske breached certain terms of the City of Bismarck’s rules of employment which may or may not impact his future employment status.
3. Jeske hired legal representation to protect his interests during the pendency of the dispute. On March 4, 2024, Jeske – by and through his counsel – provided a Notice of Claims in a letter addressed to the Bismarck City Commission. Jeske asserted various claims against the City of Bismarck arising under Federal law and reserved all claims under law and equity he believes could be asserted against the City of Bismarck in good faith.
4. The Parties wish to resolve this dispute on amicable and mutually agreeable terms to avoid any future inconvenience, costs, expenses, or fees associated with any legal or equitable proceedings in any forum in any jurisdiction. This includes, but is not limited to, proceedings before any Boards, Commissions, Arbitrators, Administrative Agencies, Administrative Law Judges, and the Courts of both North Dakota and the United States.
5. The Parties expressly agree that resolution of this dispute shall not constitute evidence of or be an admission of wrongful conduct, liability, or fault on the part of either Party to this Agreement. The Parties continue to deny any and all claims and allegations asserted against one another.
6. The Parties have agreed to a full and final settlement of all disputed issues between them.
7. To achieve the above-stated objectives, the Parties have agreed to the following terms and conditions:
 - A. The Parties agree that upon the Effective Date of this Agreement the following terms and conditions become effective with respect to Jeske’s employment status:

1. By signing this Agreement, Charles Jeske submits his notice of retirement. By signing this Agreement, the City accepts Jeske's notice of retirement.
2. The Parties agree Jeske's retirement shall be effective immediately upon the Effective Date of this Agreement.
3. The Parties agree Jeske's final day of medical insurance coverage under the City policy as provided by Blue Cross Blue Shield of North Dakota shall be the last of the month in which Mr. Jeske's retirement becomes effective (i.e. April 30, 2024).
4. The City shall pay Jeske all vested and accrued leave as required by law as of the Effective Date of this Agreement.
5. With the exception of documents required to effectuate Mr. Jeske's retirement and continuation or termination of benefits, no additional materials shall be inserted into Mr. Jeske's official personnel file in addition to its existence on Thursday, March 21, 2024.

B. In settlement and consideration for the release of any and all claims of Charles Jeske asserted or unasserted, including but not limited to claims that were or could have been asserted, the City of Bismarck will pay Charles Jeske, after execution of this Agreement, the total sum of Three-Hundred Twenty-Five Thousand dollars (\$325,000.00) as a severance and in settlement of all claims Charles Jeske had, has, or may have against the City of Bismarck.

1. Payment of the sum identified in Paragraph 7(B) of this Agreement shall be made as follows (Jeske shall place his initials next to the option he chooses below):
 - a. ☐ The City shall remit a lump sum payment in the amount of Three-Hundred Twenty-Five Thousand dollars (\$325,000.00) to Jeske within 30 days after the Effective Date of this Agreement.
 - b. ☐ The City shall remit payment to Charles Jeske in the amount of One-Hundred Sixty-Two Thousand dollars (\$162,500.00) within 30 days after the Effective Date of this Agreement. The City shall remit payment to Jeske for the remaining One-Hundred Sixty-Two Thousand dollars (\$162,500.00) no earlier than January 1, 2025, and no later than January 31, 2025.

C. In exchange for the consideration identified in Paragraphs 7(A) and 7(B) of this Agreement, the sufficiency of which is hereby admitted, Charles Jeske, in his capacity as an individual, for himself, his heirs, executors, and assigns, and the City of Bismarck, for the municipal government, employees, agents, officials, officers, directors, representatives and anyone acting or claiming to act on behalf of the City, and each of them, (collectively, "Releasing Parties") do hereby absolutely and unconditionally release and forever discharge each other and its and his predecessors, successors, affiliates and all of their present and former officers, directors, employees, agents, attorneys, insurers, representatives, heirs and assigns both in their individual, personal, and official capacities, the North Dakota Insurance Reserve Fund, its officers, agents, directors, and attorneys, (collectively, "Released Parties"), and agrees not to bring any lawsuits, institute any claim or action for damages, or otherwise authorize any party or entity to institute any claim or action for damages concerning, any and all grievances, actions, suits, proceedings, claims, complaints, charges, judgments, and executions, whether liquidated or unliquidated, known or unknown, suspected or unsuspected, and whether related or unrelated to any present dispute as to law or fact or both, which Charles Jeske or the City has ever had, presently has, or claims to have had against the Released Parties, including, without limitation:

- i. Any and all claims relating to or arising from Charles Jeske's employment relationship with the City of Bismarck and the ending of that relationship;
- ii. Any and all claims under the law of any jurisdiction including, but not limited to claims for discrimination under Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Genetic Information and Discrimination Act, the Family and Medical Leave Act, and all applicable provisions of North Dakota law including, but not limited to, the North Dakota Human Rights Act. This release further extends to any claims arising under local, State, and Federal statutory and common law (including claims for equitable relief) for wrongful discharge of employment; constructive discharge from employment; termination in violation of public policy; discrimination; retaliation; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; negligent hiring, supervision or retention; retaliation; reprisal; personal injury; assault; battery; invasion of privacy; false imprisonment and conversion;
- iii. Any and all claims for violation of the federal or any state constitution;
- iv. Any and all claims arising out of any other laws or regulations relating to employment or employment discrimination and retaliation;

- v. Any claims for any loss, cost, damage, or expense arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds received by Charles Jeske as a result of this Agreement; and
- vi. Any and all claims for attorneys' fees and costs.

It is further understood and agreed that all rights under Section 9-13-02 of the North Dakota Century Code are hereby expressly waived by the Releasing Parties. Said section reads as follows:

EXTENSION TO KNOWN CLAIMS. -- A general release does not extend to claims which the creditor does not know or suspect to exist in the creditor's favor at the time of executing the release, which if known by the creditor, must have materially affected the creditor's settlement with the debtor.

D. WAIVER OF CLAIMS ARISING UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

By executing this Agreement, in addition to the waiver of claims in Paragraph 7(C) above, Jeske knowingly and voluntarily waives any rights or claims arising under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, and its implementing regulations. By signing this Agreement, Jeske acknowledges the following:

- i. This waiver, is written in a manner affirmatively understood by Jeske based on his education and skills;
- ii. The waiver in Paragraph 7(D) specifically waives any and all claims for monetary damages Jeske has or may have under the Age Discrimination in Employment Act;
- iii. As to this waiver of claims in Paragraph 7(D), Jeske does not waive rights or claims that may arise after the date this waiver is executed;
- iv. This waiver of rights or claims under the Age Discrimination in Employment Act is made in exchange for consideration in addition to anything of value to which the individual is already entitled;
- v. Jeske has been advised to consult with his attorney prior to executing this Agreement;
- vi. Jeske has a period of at least 21 days within which to consider this Agreement; however, it may be executed any time prior to the expiration of 21 days;
- vii. Jeske shall have a period of at least 7 days following the execution of this Agreement to revoke it. This Agreement shall not become effective or enforceable until the 7-day revocation period has expired. In the event Jeske desires to revoke this

Agreement, he shall deliver written notice to Jason Tomanek at 221 N. Fifth St., Fourth Floor, Bismarck, ND 58506 or by email at bismarckadmin@bismarcknd.gov.

8. Neither the City of Bismarck or its counsel, have expressed any opinion as to the appropriate tax treatment of the payment(s) and recommend to Jeske that he consult with his tax advisor regarding the proper tax treatment of the payment(s). Jeske agrees that he is solely responsible for and will pay any and all additional taxes due as a result of the payment(s).
9. Charles Jeske acknowledges that the payment described in this Agreement constitutes sufficient consideration to support execution of this Agreement.
10. The Parties acknowledge by signing this Agreement its terms constitute fair consideration and constitute a binding contract between them.
11. Signing this Agreement shall not be construed as an admission of guilt, liability, policy violation or wrongdoing by either Party and the Parties hereto will never contend that this Agreement constitutes such an admission. Rather, Jeske and the City seek to buy peace from any past, present, or future disputes that have or may arise between them with respect to Jeske's employment terms or conditions with the City.
12. The Parties acknowledge that they have been represented by their own attorneys in this matter, have fully negotiated this Agreement, and have not relied upon statements made by the other party, their agents, or attorneys in agreeing to sign this Agreement.
13. If any provision of this Agreement is held to be illegal, invalid or unenforceable under the present or future laws, rules, or regulations, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provisions or by its severance from this Agreement.
14. The terms of this Agreement supersede and terminate all prior oral and written agreements and communications between the Parties. Charles Jeske and his counsel, and the City of Bismarck and its counsel, agree that this Agreement contains all of the agreements between them, and that they have no other written or oral agreements. This Agreement can only be modified by written agreement signed by both parties.
15. Any action to enforce the terms of this Agreement must be venued in the North Dakota District Court of Burleigh County, North Dakota. The parties agree this Agreement shall be governed by North Dakota law. In the event either party, or their assigns, takes legal action to enforce their rights under this Agreement, it is agreed that such party, or its assignee, if successful in such action, shall be entitled to the reasonable costs and

expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of enforcement and collection.

16. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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Pursuant to 28 U.S.C. § 1474 and N.D.C.C. Ch. 31-15, I declare under penalty of perjury that I have read the foregoing Agreement, fully understand it, and have executed this Agreement on my own behalf by placing my signature below on this _____ day of March, 2024.

Charles Jeske

Pursuant to 28 U.S.C. § 1474 and N.D.C.C. Ch. 31-15, I declare under penalty of perjury that I have read the foregoing Agreement, fully understand it, and have executed this Agreement on my own behalf by placing my signature below on this _____ day of March, 2024.

On behalf of, and as authorized by, the City of
Bismarck Board of City Commissioners