

**Memorandum
Mayor's Office**

To: Members of the City Council
Subject: Resignation of City Manager Thomas Thomas
Date: September 14, 2016



I have received a Letter of Resignation from City Manager Thomas Thomas that would make his last day on the job Tuesday, September 20, 2016.

A copy of his letter and the severance agreement are attached.

Recommendation:

It is recommended that the City Council accept the Letter of Resignation and the severance agreement as written.

Submitted by: Dennis E. Pauley, Mayor *DP*

Approved by: Dennis E. Pauley, Mayor



ROCK ISLAND
ILLINOIS

City Manager Thomas Thomas

September 13, 2016

Dear Mayor Pauley and City Council Members:

After over 5 years of service to the City of Rock Island, it is time for me to pursue other opportunities and interests. I will step down from my position as City Manager for the City of Rock Island on September 20, 2016. I have given full attention to my duties and responsibilities.

It has been a unique honor to serve as Rock Island's City Manager. I greatly appreciate the opportunity and privileges I have enjoyed leading such a talented and dedicated team of city employees. I will truly miss my associations here.

I am proud of the important work we completed during my tenure as your City Manager. The City of Rock Island is a strong city with many unique opportunities. I hope that I have added some value to that tradition of excellence. I have tried mightily to leave the city organization and this wonderful community better for my years of service in Rock Island.

I am grateful for your friendship and support and the tireless efforts of the men and women of the City of Rock Island. I look forward to working with you to ensure a smooth and orderly transition as I leave office.

Thank you for allowing me to serve you and the City of Rock Island.

Sincerely,

Thomas Thomas

1528 Third Avenue, Rock Island, Illinois 61201-8678

Phone: 309.732-2012 Fax: 309.732-2055

Email: thomas.thomas@rigov.org



CONFIDENTIAL SEVERANCE AGREEMENT AND GENERAL RELEASE

THIS CONFIDENTIAL SEVERANCE AGREEMENT AND GENERAL RELEASE (hereinafter "Agreement") is entered into this 13TH day of SEPTEMBER, 2016, by and between Thomas Thomas, any heirs, successors, administrators, executors or assigns (hereinafter "Thomas") and the City of Rock Island, all current and former officers, directors, council members, aldermen, servants, agents, employees, successors, assigns, insurers, guarantors, indemnitors, affiliates, parent or subsidiaries, representatives, benefit plans, fiduciaries and related and/or affiliated entities and any person or entity acting on behalf of the City of Rock Island (hereinafter "the City").

RECITALS

Thomas's employment with the City will end on September 20, 2016, his Separation Date. Regardless of the execution of this Agreement, shortly after Thomas's separation, he will receive the following:

- Thomas will be paid for his accrued and unused vacation time in a lump sum.
- Thomas will receive information from the City regarding his eligibility to continue health benefits in accordance with COBRA.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises in this Agreement, it is agreed as follows:

1. The City shall provide Thomas with the following severance benefit, provided Thomas has not revoked the Agreement as provided herein:
 - a) The City shall accept Thomas's resignation, effective as of September 20, 2016.
 - b) The City shall allow Thomas to relinquish his powers, duties, and responsibilities as City Manager of the City of Rock Island, effective September 20, 2016.
 - c) The City shall continue to pay Thomas his current salary in accordance with standard payroll practices through and until September 30, 2016.
 - d) Upon the occurrence of Thomas's Separation Date, the City shall pay Thomas a severance of six (6) months' salary, including health insurance (with payment of the employee's premium contribution being made by Thomas) and life insurance coverage for the six (6) month period. The

severance pay will be paid over a period of six (6) months in accordance with the City's normal pay periods and at the rate of Thomas's current salary as of the date of the execution of this Agreement.

- e) The City agrees to pay Thomas for his accrued and unused sick leave time in a lump sum.
- f) The City agrees to provide a favorable reference letter regarding Thomas's employment with the City from Mayor Dennis E. Pauley.

2. Thomas acknowledges and agrees that he was not entitled to the severance benefit provided in Paragraph 1 absent his execution of this Agreement and that the severance benefit is provided by the City in exchange for his signing this Agreement. Thomas further acknowledges that the severance benefit provided under this Agreement is adequate consideration for his promises and releases contained herein.

3. Thomas agrees and promises to successfully perform the duties and responsibilities of City Manager through and until his Separation Date. This Agreement does not limit the City's right to terminate Thomas for cause, pursuant to his Employment Agreement, for qualifying misconduct occurring prior to Thomas's Separation Date. In the event Thomas is terminated for cause for conduct occurring prior to his Separation Date, Thomas agrees that he is not entitled to the severance benefit provided in Paragraph 1.

4. If Thomas fails to comply with any of his obligations under this Agreement or has made false representations or warranties, the City is not obligated to provide Thomas any severance payment and the City will terminate its payment(s) to Thomas. If his breach becomes known or occurs after the severance payment has been provided, the City is entitled to a full refund of the payments made to Thomas.

5. Thomas irrevocably and unconditionally releases the City, all present and former aldermen, council members, governors, employees, agents, representatives, successors, assigns, insurers, guarantors, indemnitors, fiduciaries, its benefit plans, related affiliated parent or subsidiary institutions, and any person or entity acting on behalf of the City from **all known or unknown claims** that Thomas presently might have arising out of his employment with or resignation from the City. The claims Thomas is releasing include, but are not limited to:

- a) any and all claims of unlawful discrimination with regard to race, sex, color, religion, or national origin under Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Acts of 1866 and 1871; Executive Order 11246, as amended; the Civil Rights Act of 1991;

- b) any and all claims under the Employee Retirement Income Security Act, as amended;
- c) any and all claims under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq. and Executive Order 11,141;
- d) any and all claims under the Older Workers Benefit Protection Act;
- e) any and all claims under the Americans With Disabilities Act, as amended;
- f) any and all claims under the Vocational Rehabilitation Act of 1973, as amended;
- g) any and all claims under the federal and state Worker Adjustment and Retraining Notification Act ("WARN");
- h) any and all claims under the Equal Pay Act, as amended, which prohibits paying men and women unequal pay for equal work;
- i) any and all claims under the Family and Medical Leave Act;
- j) any and all claims under the Illinois Human Rights Act, as amended; the Illinois Constitution;
- k) any and all claims under the Illinois Wage Payment and Collection Act, 820 ILCS 115/1;
- l) any and all claims for wrongful employment termination or breach of contract and any other claims whatsoever, including, but not limited to, claims relating to public policy or tort claims, retaliatory discharge claims, claims of promissory estoppel, defamation, libel and/or claims, intentional infliction of emotional distress claims, invasion of privacy claims, personal injury claims, claims for fraud, claims for negligence, claims for back pay, claims for unearned bonuses, commissions or wage increases, claims for compensatory and/or punitive damages, claims for costs and/or attorneys' fees;
- m) any and all claims under the Illinois Educational Labor Relations Act or under any collective bargaining agreement; and
- n) any and all claims under any other federal or state laws or statutes.

6. This Agreement does not include or cover any claims that could be made under state workers compensation or any other claims that by law cannot be waived.

In addition, Thomas warrants that Thomas does not have any knowledge of any facts that would give rise to claims against the City under workers compensation law.

7. Thomas releases his right to file a court action or to accept individual remedies or damages in any action filed on his behalf by the Equal Employment Opportunity Commission or any other governmental agency against the City, including, but not limited to, the right to monetary damages or other individual legal or equitable relief. Moreover, should Thomas bring an action against the City on a claim or claims that a court or agency with jurisdiction concludes Thomas released pursuant to this paragraph, Thomas shall be required to pay any reasonable attorneys' fees and costs the City incurs in defending that action.

8. Thomas warrants that he has not filed any claims, complaints, charges, or lawsuits against the City, its employees or agents, with any governmental agency or any court, and Thomas agrees he will not do so at any time hereafter, for any matter, claim, or incident, known or unknown, which occurred or arose out of occurrences on or prior to his Separation Date. This does not limit Thomas from filing a claim for the sole purpose of enforcing this Agreement.

9. For the purpose of implementing a full and complete release and discharge of the City, Thomas expressly acknowledges that this Agreement includes, without limitation, all claims including those of which Thomas does not have knowledge of or suspects to exist in his favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims.

10. Thomas agrees not to disparage or defame, either orally or in writing, the City, its council members, mayor, aldermen, employees, agents, or its services or products. Council members agree not to disparage or defame, either orally or in writing, Thomas Thomas.

11. Thomas agrees not to engage in any actions contrary to the interests of the City, including aiding or assisting with the prosecution of any other person's or agencies' investigations, claims, charges, or lawsuits, or any actions at law against the City unless subject to subpoena or ordered by any Court. Additionally, Thomas agrees to continue to facilitate and assist the City with any pending or future litigation or claims or threats of litigation or claims upon the City's request.

12. Thomas agrees to return to the City, all City property, including proprietary information, and that this is a condition precedent to Thomas receiving the benefits provided to him under this Agreement.

13. This Agreement does not constitute an admission by the City that any action taken during the course of Thomas's employment was unlawful or wrongful, or that any action constituted a breach of contract or violated any federal, state, or local law, policy, rule, or regulation. This Agreement may not be introduced as evidence or

relied upon by either party in subsequent legal proceedings except proceedings alleging, arising out of, or seeking redress for breach of the terms of this Agreement or to defend against claims released by this Agreement or other claims related to his employment.

14. Thomas understands and agrees that this Agreement may be pleaded as a complete defense to, and in bar of, any action or proceeding brought, maintained, or conducted by Thomas in connection with or on account of any of the matters set forth herein.

15. Thomas agrees to indemnify and to hold the City, its present and former council members, mayor, aldermen, agents, successors and assigns, harmless from any and all losses, costs, damages, or expenses, including without limitation, attorney's fees, incurred by the City arising out of any breach by Thomas of this Agreement.

16. Thomas represents and acknowledges that in executing this Agreement, he does not and has not relied upon any representation or statement not set forth herein made by the City or any of the City's agents, representatives, or attorneys with regard to the basis or effect of this Agreement.

17. Thomas agrees that no promises have been made which are not included in this Agreement and that this Agreement contains the entire understanding between Thomas and the City.

18. Thomas warrants and represents that he is fully entitled to enter into this Agreement and release and/or waive all claims and causes of action as set forth herein.

19. The parties understand and agree that the existence of and the terms of this Agreement are strictly confidential, except for any disclosure required by law or as necessary for legitimate enforcement or compliance purposes. Thomas agrees that now and forever he will keep the terms and monetary amount of this Agreement completely confidential, and that he will not disclose such to any other person directly or indirectly. As an exception to the foregoing, and the only exception, Thomas may disclose the terms and monetary amount of this Agreement to his attorney, financial advisor(s), and current spouse, who shall be advised of its confidentiality. Thomas further agrees that should he make such disclosures as provided in the preceding sentence, he is fully responsible for any breach of this confidentiality provision by the individual to whom he made such disclosure.

20. Thomas further agrees that he will hold in confidence and will not, directly or indirectly, disclose any City confidential information to any other person or entity without first obtaining the City's prior written consent. The term "confidential information" includes, but is not limited to, all information that Thomas acquired relating to the City, its operations, computer systems, employees, council members,

alderman or other agents. Breach of this provision by Thomas will subject him to all legal and equitable remedies available to the City, including injunctive relief.

21. The provisions of this Agreement are severable, and, if any portion of this Agreement is declared invalid or unenforceable, the remaining provisions shall remain binding and fully enforceable. The failure of the City to enforce any provision contained herein shall not be construed as a waiver of the provision or of any of the remaining provisions.

22. Any amendments to this Agreement must be in writing and signed by all parties to the Agreement.

23. Any controversy between the parties to this Agreement involving the construction or application of any of the terms, provisions, or conditions of this Agreement, shall be finally and exclusively settled by binding arbitration (1) before a single arbitrator chosen by mutual agreement of the parties hereto, (2) held in Rock Island, Illinois and (3) conducted in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. Costs of the arbitration shall be split, unless otherwise directed by the arbitrator.

24. Neither this Agreement nor any of the rights contained herein are transferable or assignable, in whole or in part, by either party without the prior written consent of the other party.

25. To the extent that any provision or portion of this Agreement shall be held invalid, void, or unenforceable by an arbitrator chosen by the parties or a court of competent jurisdiction, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

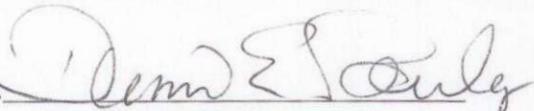
26. This Agreement shall be governed and construed in accordance with the laws of Illinois and related federal laws, statutes, and regulations.

27. **Thomas understands, acknowledges, and agrees that the City is providing him with twenty-one (21) days in which to consider this Agreement; however, he may execute this Agreement sooner.**

28. Thomas agrees that the provisions set forth in this Agreement are written in language understandable to him and further affirm that he understands the meaning of the terms of this Agreement and their effect. Thomas represents that he enters into this Agreement freely and voluntarily.

29. Thomas knowingly and voluntarily intends to be legally bound by this Agreement.

ACCEPTED BY THE CITY OF ROCK ISLAND:

By: 
Dennis E. Pauley

Its: Mayor

Date: September 13, 2016