

1. Agenda

Documents:

BOMC-2-14-18-SCM-AGENDA.PDF

2. Meeting Called To Order/Adoption Of Agenda

3. Approve Separation Agreement With City Manager

Documents:

SEPARATION.PDF

4. Approve Consulting Agreement With Former City Manager

Documents:

CONSULTING.PDF

5. Appoint Interim City Manager And Approve Related Agreement

Documents:

INTERIM.PDF

6. Public Comment

7. Adjournment



**BOARD OF MAYOR AND COMMISSIONERS
SPECIAL CALLED MEETING
February 14, 2018
5:30 p.m.**

AGENDA

- Item No. 1 Meeting Called to Order
- Item No. 2 Adoption of Agenda
- Item No. 3 **Approve Separation Agreement with City Manager**
- Item No. 4 **Approve Consulting Agreement with Former City Manager**
- Item No. 5 **Appoint Interim City Manager and Approve Related Agreement**
- Item No. 6 Public Comment
- Item No. 7 Adjournment

SEPARATION AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises, covenants, and agreements made herein by and among **ROY CLAIBORN BROWN** (hereafter "BROWN," a term which includes BROWN and all heirs, successors and assigns, agents, and attorneys), and **the City of Avondale Estates, Georgia** (hereafter "CITY," a term which includes the City of Avondale Estates, Georgia, all City elected officials, current or former officers, directors, managers, employees, agents, attorneys, insurers, and successors and assigns of CITY), the parties agree to the following:

1. Resignation by BROWN

BROWN hereby voluntarily resigns his employment with the City effective Wednesday, February 28, 2018, at 5:00 p.m., in anticipation of retirement.

The parties mutually agree that BROWN vacates his position as City Manager effective February 14, 2018, at 5:00 p.m. For the period of February 14, 2018, at 5:00 p.m. through February 28, 2018, BROWN shall remain an employee and receive his usual salary and benefits. However, BROWN shall not act as City Manager during this period and shall not report to the City Hall for work. Instead, BROWN shall be on administrative leave during this period. BROWN shall provide consulting services to the City during this period pursuant to the Consulting Services Agreement between the parties dated February 14, 2018.

2. Severance Payment

In consideration of BROWN's covenants and promises contained herein, the City agrees to pay BROWN the sum of Forty Four Thousand Seven Hundred Eighty Seven Dollars and Sixty Cents (\$44,787.60). Said payment will be delivered to BROWN no later than March 14, 2018.

3. Consultancy

CITY agrees to engage BROWN as a consultant and BROWN agrees to consult with the person acting as City Manager during the period from February 15, 2018 through June 30, 2018. The specific terms of this

consultancy are set forth in the separate Consulting Agreement between the parties dated February 14, 2018.

4. Health Insurance

In consideration of BROWN's covenants and promises made herein, CITY agrees to make premium payments necessary to maintain BROWN's current health insurance coverage through December 31, 2018, under the COBRA program. City shall make such premium payments directly to the insurer.

CITY's obligation pursuant to this section is subject to the following condition: if BROWN accepts employment with an employer that offers health insurance coverage comparable to his current plan then BROWN shall promptly notify CITY of such fact and the date that such insurance through a new employer will become available to him and, effective on the date that such insurance becomes available, the City shall have no further obligation to fund BROWN's health insurance through the COBRA program.

5. Earned Benefits

The parties agree that BROWN is entitled to be paid for vested but unused vacation and sick days, pursuant to the City's personnel policies applicable to all employees. Such payment will be made not later than March 15, 2018.

6. No Admissions

BROWN and CITY agree that the entry of the parties into this Agreement, and the agreements contained herein, are not and shall not be considered to be an admission of liability on the part of any party hereto or any parties hereby released or held harmless.

7. BROWN'S Release of Claims

In consideration of the undertakings and promises set forth in the Agreement, BROWN releases, discharges, and holds harmless CITY, as defined herein, the Downtown Development Authority of the City of

Avondale Estates (“DDA”) and every past or present director of the DDA (collectively the “Released Parties”) from each and every claim, cause of action, right, liability, or demand of any kind and nature, and from any other claims which may be derived therefrom (collectively referred to as “claims”), that BROWN had, has, or might claim to have against the Released Parties, including, but not limited to, any and all claims:

- a. arising from BROWN’S employment, pay, bonuses, insurance, benefits, and other terms and conditions of employment or employment practices of CITY; and/or
- b. relating to the separation of BROWN’S employment or the surrounding circumstances thereof; and/or
- c. based on discrimination, harassment, or retaliation on the basis of race, color, religion, sex, sexual orientation, national origin, handicap, disability, age, or any other category protected by law under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, the Rehabilitation Act, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act, the Equal Pay Act, Executive Order 11246, and any and all Georgia state and local laws prohibiting discrimination; and/or
- d. based on any plan(s) sponsored by CITY, or arising out of the administration of such plan(s), including, but not limited to, claims for benefits, breaches of fiduciary duty, retaliation or any adverse employment action for asserting plan rights or to prevent asserting these rights; and/or
- e. based on any contract including, but not limited to, the “Employment Contract” dated February 11, 2008, and the purported First Amendment to that contract dated February 23, 2015; and/or
- f. based on any theory of tort, whistleblower, personal injury, wrongful discharge, or retaliation; and/or

- g. based upon any claim for attorneys' fees and expenses; and/or
- h. based on any other federal, state or local constitution, regulation, law (statutory or common) or legal theory.

8. BROWN'S Covenant Not to Sue or Accept Recovery

BROWN agrees not to sue CITY or any Released Party on account of any claim released in this Agreement and agrees not to file any complaint against a Released Party with any federal, state or local agency. BROWN further agrees not to accept, recover or receive any monetary damages, equitable remedy, or any other form of relief which may arise out of or in connection with any administrative remedies, which may be filed with or pursued independently by any governmental agency or agencies, whether federal, state or local.

Furthermore, it is the parties' intent that the payments made by CITY pursuant to this Agreement shall be the sole and final payments made by CITY to BROWN for any and all claims arising out of BROWN'S employment with CITY and that BROWN shall not be entitled to recover any additional sums from CITY.

BROWN also waives, foregoes, and releases any right to an appeal pursuant to the City's Charter, Code of Ordinances or personnel policies.

9. CITY's Release of Claims and Covenant Not to Sue or Accept Recovery

Except as specifically limited in this section, CITY hereby releases any and all claims it may have against BROWN and covenants not to sue BROWN for any released claim. CITY does not release BROWN from any claims stemming from "dishonesty losses" as defined in Section 6 – Bonding Requirement of the Employment Contract between the parties dated February 11, 2008.

10. Older Workers Benefit Protection Act

This Agreement is intended to comply with the Older Workers Benefit Protection Act. BROWN acknowledges and agrees that he specifically is waiving rights and claims under the Age of Discrimination in Employment Act. Specifically:

- A. BROWN understands the terms and conditions of this Agreement;
- B. BROWN has been advised of his right to consult an attorney to review the Agreement, and has the benefit of or the option to consult an attorney throughout the separation process;
- C. BROWN does not waive any rights or claims that may arise after the date the waiver is executed;
- D. BROWN is receiving consideration beyond anything of value to which he already is entitled; and
- E. BROWN shall have up to 21 days to consider this Agreement and for a period of at least 7 days following the execution of this Agreement, BROWN may revoke the Agreement, and the Agreement shall not become effective or enforceable until the revocation period has expired.

11. Miscellaneous

a. Assignment

Neither this Agreement nor any duties or obligations under this Agreement shall be assignable without the prior written consent of the other party.

b. Successors and Assigns

Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, legal representatives, successors, and assigns of the respective parties.

c. Attorney's Fees

The parties were each represented by their own counsel in the negotiation of this Agreement. The parties shall each be responsible for their own attorney's fees related to the drafting and review of this Agreement.

d. Governing Law

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Georgia.

e. Amendment

This Agreement may be amended only by the mutual agreement of the contracting parties in a writing to be attached to and incorporated into this Agreement.

f. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not effect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained it.

12. City Property/Brown's Personal Property

BROWN shall return any and all property owned by CITY that

is in his possession or under his control, including but not limited to, computer/office automation equipment, passwords, keys, electronic ID cards, records, etc. and shall remove all of his personal property from City Hall by February 15, 2018, at 5:00 p.m.

13. Entire Agreement

This Agreement supersedes any and all prior negotiations or agreements between the parties and represents the entire agreement between the parties with respect to Employee's employment with the City and separation therefrom. The parties hereby acknowledge and agree that there have been no offers or inducements which have led to the execution of this Agreement other than as stated herein. BROWN represents and warrants that he has fully read this Agreement, understands same, and enters into it freely.

[SIGNATURE PAGE FOLLOWS]

CITY OF AVONDALE ESTATES, GEORGIA

Jonathan Elmore, Mayor (date)

Attest:

Gina Hill, City Clerk

Approved as to Form:

Robert E. Wilson
City Attorney

ROY CLAIBORNE BROWN (date)

CONSULTING AGREEMENT

This Consulting Agreement is made and entered into this 14th day of February, 2018, by and between Roy Claiborn Brown (“Consultant”) and the City of Avondale Estates, Georgia (“City”). The parties agree as follows:

1. Consulting Services

Consultant agrees to assist the City with the transition to a new city manager. These consulting services are anticipated to be rendered remotely via phone and/or email. To the extent Consultant’s presence is required, City shall give Consultant as much advance notice as possible.

Consultant will advise, assist and consult with the person acting as City’s city manager upon request. Further details regarding the consulting services that are subject of this Agreement are as follows:

- (a) Consultant will respond to phone, email or other communications from the city manager promptly;
- (b) Consultant shall not be required to consult more than ten (10) hours per week; and
- (c) Consultant will use his best efforts to assist the person acting as city manager when called upon.

2. Term and Termination

The term of this Agreement is February 15, 2018, through and including June 30, 2018, unless terminated sooner pursuant to this section.

After giving written notice that the City deems Consultant to be in default and identifying the specific nature of the alleged non-performance, if Consultant fails to cure such default within seven days the City may terminate this Agreement for non-performance. If this Agreement is terminated by the City due to non-performance by Consultant, City shall give written notice to Consultant and shall compensate Consultant for services rendered to the date of termination (with any partial month paid on a pro rata basis) and shall have no further obligation under this Agreement.

If this Agreement is terminated by the City for non-performance, Consultant shall have the right to appeal such decision to an arbitrator to be selected by the American Arbitration Association. Such arbitrator shall determine whether or not the City was justified in terminating for non-performance and designate either the

City or Consultant as the “prevailing party” on appeal. If the arbitrator determines that the City was not justified in terminating this Agreement for non-performance, City shall pay Consultant the remaining value of this Agreement. The non-prevailing party shall pay the prevailing party’s reasonable costs and attorney’s fees incurred in arbitration.

3. Compensation

For the period of February 15, 2018, through the end of February 2018, Consultant will be compensated as an employee of the City through the usual payroll process and will not receive any additional compensation from the City for his consulting services. For the months of March, April, May and June of 2018, Consultant shall be paid Six Thousand Five Hundred (\$6,500.00) per month for consulting services.

Such payments will be made no later than thirty days after the last day of each such month.

4. Independent Contractor

Consultant shall perform consulting services under this Agreement as an Independent Contractor. Consultant shall furnish his own labor, materials and workplace at his own expense. Consultant shall be responsible for any tax obligation associated with payments made and received under this Agreement.

5. Notices

To City:
City Manager, City of Avondale Estates
21 N. Avondale Plaza
Avondale Estates, Georgia 30002
Kturner@avondaleestates.org

To Consultant:
R. Clai Brown

Email: _____

6. Miscellaneous Terms

a. Assignment

Neither this Agreement nor any duties or obligations under this Agreement shall be assignable without the prior written consent of the other party.

b. Successors and Assigns

Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, legal representatives, successors, and assigns of the respective parties.

c. Attorney's Fees

The parties were each represented by their own counsel in the negotiation of this Agreement. The parties shall each be responsible for their own attorney's fees related to the drafting and review of this Agreement.

d. Governing Law

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Georgia.

e. Amendment

This Agreement may be amended only by the mutual agreement of the contracting parties in a writing to be attached to and incorporated into this Agreement.

f. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not effect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

So agreed:

[SIGNATURE PAGE FOLLOWS]

CITY OF AVONDALE ESTATES, GEORGIA

Jonathan Elmore, Mayor

Date

Attest:

Gina Hill, City Clerk

Approved as to Form:

Robert E. Wilson
City Attorney

ROY CLAIBORNE BROWN

Date

STATE OF GEORGIA

COUNTY OF DEKALB

INTERIM CITY MANAGER CONTRACT BETWEEN THE
CITY OF AVONDALE ESTATES AND KENNETH TURNER

THIS EMPLOYMENT CONTRACT (“Agreement”) is made and entered into effective the 14th day of February, 2018 (“Effective Date”) by and between the CITY OF AVONDALE ESTATES, GEORGIA, hereinafter referred to as “City” and KENNETH H. TURNER, hereinafter referred to as “Employee.”

WITNESSETH

WHEREAS, Employee is currently employed by City as the City’s Finance Director; and

WHEREAS, the City wishes to employ Employee as City Manager of the City of Avondale Estates, Georgia, on an interim basis, in addition to his role as Finance Director; and

WHEREAS, the Employee wishes to serve as interim City Manager in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the payments, covenants and mutual promises contained herein, and in consideration of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Employee agree as follows:

1.

EMPLOYMENT OF EMPLOYEE

City hereby appoints Employee to the position of interim City Manager in accordance with the terms of this Agreement. Employee’s term of employment as

interim City Manager under this Agreement shall begin on February 15, 2018, shall be of an indefinite duration, and shall be subject to the termination provisions set forth in this Agreement.

2.

DUTIES

Employee shall provide the services set forth in Exhibit "A" to this Agreement, which is incorporated herein by reference. In addition, as interim City Manager, Employee shall specifically provide such advice, analysis, and service as shall be requested by the Board of Mayor and Commissioners or its designee. Employee shall devote all of his productive time, ability and attention to the performance of the duties under this Agreement as is reasonably necessary for a satisfactory performance. The parties recognize that Employee will be required to donate a great deal of time outside of normal business hours to his employment. Accordingly, Employee shall be allowed to establish an appropriate work schedule so long as all job duties are met. The Employee shall not, directly or indirectly, render any services of a business, commercial or professional nature to any other person or entity, whether for compensation or otherwise, without the prior written consent of the City, which consent may be granted or withheld in the City's sole and absolute discretion. Employee shall perform his duties as interim City Manager at City's offices (or at other locations as the requirements of the duties require) and necessary supplies, facilities and equipment will be supplied by the City.

3.

NOTICES

Any notices to be given under this Agreement by either party to the other may be effected either by personal delivery in writing or by registered or certified mail with postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in this paragraph, but each party may change the address by written notice in accordance with the paragraph. Notices delivered personally shall be deemed received as of the actual receipt; mailed notices shall be deemed received as of three (3) days after mailing. Each party has a duty to notify the other party of any change of address within five (5) days of such a change.

NOTICE ADDRESSES:

City of Avondale Estates
Attention: City Clerk
21 N. Avondale Plaza
Avondale Estates, GA 30002

Kenneth H. Turner
30 Shagbark Drive, SW
Cartersville, GA 30120

4.

COMPENSATION AND BENEFITS

(A) For all services described herein, Employee's monthly base salary ("Base Salary") shall be Twelve Thousand One Hundred Forty One Dollars and Sixty Seven Cents (\$ 12,141.67), to be paid in such manner and at such time as other employees of the City are paid.

(B) Employee shall provide his own automobile for travel between his residence and City Hall and travel on City business. The City shall pay Employee an automobile allowance of Seventy-Five Dollars (\$75.00) per pay period (the City uses

twenty six (26) pay periods per year) and Employee shall bear all expenses of operating his vehicle, including gasoline, maintenance, and automobile liability insurance.

(C) Employee shall continue to receive the same health and dental insurance benefits that he currently receives through his employment with the City.

(D) Employee shall accrue paid vacation leave and sick leave pursuant to the City's personnel policies, in the same manner as all other City employees. Accumulated but unused vacation leave or sick leave may be carried forward to the next year to the extent and in the manner provided for in City's personnel policies.

(E) When City meetings or other City business make it necessary or convenient for Employee to stay overnight in DeKalb County, the City will provide \$250.00 per diem for lodging and meals. Such per diem will be provided to Employee up to five times per month without prior approval; additional per diem would require approval in advance by the Mayor.

5.

INDEMNITY

City agrees to defend, indemnify and hold harmless Employee against and from any and all claims, liabilities, penalties, costs, and expenses that may be asserted against or suffered by Employee as a result of his performance under this Agreement, except that City shall not indemnify Employee for claims, liabilities, penalties, costs, and expenses that may be asserted against or suffered by Employee as a result of Employee's gross negligence, or willful, wanton or intentional misconduct. City agrees to provide legal representation and pay the costs of defending against a claim against Employee in his individual capacity that arises from Employee's performance of his job duties so long as

the City determines that the alleged conduct was within the scope of Employee's employment.

6.

FIDELITY BOND

Employee shall maintain a fidelity bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) that will protect the City from dishonesty losses (i.e., loss of City monies, securities, and other property) arising out of or resulting from Employee's action or failure to act. City shall reimburse Employee for the reasonable cost of said fidelity bond.

7.

TERMINATION

Either party hereto may terminate this Agreement at any time for any reason or for no reason, by giving written notice of termination to the other party. City shall be required to give Employee seven (7) days written notice of termination. Employee shall be required to give City sixty (60) days written notice. Employee shall not be entitled to any severance pay upon termination.

8.

OPPORTUNITY TO APPLY FOR
PERMANENT CITY MANAGER POSITION

The City intends to engage an outside consultant to develop a process and perform an open search for a person to fill the City Manager position on a permanent basis. Employee is encouraged to apply for the permanent City Manager position. If

Employee elects to apply, Employee agrees to participate in the same process in the same manner as other applicants.

9.

MISCELLANEOUS

A) Assignment

Neither this Agreement nor any duties or obligations under this Agreement shall be assignable by Employee without the prior written consent of City.

B) Successors and Assigns

Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.

C) Attorney's Fees

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief that may be available. The parties shall each be responsible for their own attorney's fees related to the drafting and review of this Agreement.

D) Governing Law

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Georgia.

E) Amendment

This Agreement may be amended by the mutual agreement of the contracting parties in a writing to be attached to and incorporated into this Agreement.

F) Legal Construction

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

10.

ENTIRE AGREEMENT

This Agreement supersedes any and all prior negotiations or agreements between the parties and represents the entire agreement between the parties with respect to Employee's employment with the City. The parties hereby acknowledge and agree that there have been no offers or inducements which have led to the execution of this Agreement other than as stated herein. The Employee represents and warrants that he has fully read this Agreement, understands same, and enters into it freely.

CITY OF AVONDALE ESTATES, GEORGIA

Jonathan Elmore, Mayor

ATTEST:

Gina Hill, City Clerk

(SEAL)

Approved as to Form:

Robert E. Wilson, City Attorney

EMPLOYEE:

KENNETH H. TURNER

Exhibit "A"

Duties of Employee-City Manager

1. Appoint and, when the City Manager deems it necessary for the good of the City, suspend or remove all city employees and administrative officers the City Manager appoints, except as otherwise provided by law or personnel ordinances adopted by the Board of Mayor and Commissioners ("BOMC"); and the City Manager may authorize any administrative officer who is subject to the City Manager's direction and supervision to exercise those powers with respect to subordinates in that officer's department, office or agency;
2. Direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by the City charter or by law;
3. Attend BOMC meetings as requested by the BOMC. At such meetings, the City Manager shall have the right to take part in discussion but not to vote;
4. See that all laws, provisions of the City charter, and acts of the BOMC, subject to enforcement by the City Manager or by Officers subject to the City Manager's direction and supervision, are faithfully executed;
5. Prepare and submit a proposal annual operating budget and capital budget to the BOMC;
6. Submit to the BOMC and make available to the public a complete report of the finances and administrative activities of the City as of the end of each month and the end of each fiscal year;
7. Make such other reports as the BOMC may require concerning the operations of City departments, offices, and agencies subject to the City Manager's direction and supervision;
8. Act as purchasing agent of the City and purchase all materials, supplies, and equipment for the conduct of the business of the City;
9. Keep the BOMC fully advised as to the financial condition and future needs of the City and make such recommendations to the BOMC concerning the affairs of the City as the City Manager deems desirable;
10. Perform other such duties as are specified for the City Manager in the City charter or as may be required by the BOMC;
11. Acquire BOMC direction, establish estimated income and direct the development of a balanced operating and capital improvements budget;

12. Consider financial restraints, manpower requirements and citizen's demands in establishing program, project and operational goals and priorities;
13. Direct, generate, organize and implement new programs to further improve the quality of life based upon citizen's requirements and the BOMC's direction;
14. Review unique situations that result in problem areas, research possible solutions and implement action for appropriate resolution;
15. Initiate reviews and implement the enforcement of established local rules and regulations;
16. Adapt organization to the changing customs and operating techniques to ensure adherence to the appropriate chain of command and prevent dual responsibility;
17. Utilize all available methods of communications; maintain an intimate working knowledge and constant surveillance of the day-to-day operation;
18. Maintain a diligence in seeking funds for those projects and programs that may be partially or completely paid for by alternative sources;
19. Embrace any opportunity for improved revenues, including seeking out and making application for State and Federal grants;
20. Improve incentives for employees to enhance their education and work skills through the employee benefit program;
21. Evaluate expenditures to insure a dollar in value was received for a dollar spent;
22. Keep expenditures within budgeted restrictions;
23. Inform the BOMC as to the status of daily operations, special projects and programs; and
24. Ensure that all day-to-day operations of the City are carried out as directed by the policy established by the BOMC, and in accordance with the laws, rules and regulations of the state and federal government. The City Manager will provide assistance to the BOMC as requested.