

# AGENDA

**NEWTON CITY COUNCIL**  
City Hall  
101 West 4th Street South

**SPECIAL MEETING**  
April 11, 2008  
12:00 p.m.

**AMERICANS WITH  
DISABILITIES ACT  
COMPLIANCE**

*IS THERE ANYONE PRESENT WHO MAY REQUIRE SPECIAL  
ASSISTANCE IN BEING ABLE TO PARTICIPATE IN THIS PUBLIC  
MEETING?*

**CALL TO ORDER**

Roll Call

**RESOLUTION**

1. Resolution Ending Employment Agreement with City Administrator

**CLOSED SESSION**

2. Closed Session to Evaluate the Professional Competency of an Individual whose Appointment, Hiring, Performance, or Discharge is being Considered when necessary to Prevent Needless and Irreparable Injury to that Individual's Reputation and that Individual Requests a Closed Session, Which Discussions are Exempt from the Open Meetings Law Pursuant to the Provision of Section 21.5(1)(i), Code of Iowa 2007.

**OPEN SESSION**

**RESOLUTION**

3. Interim Leadership

**DISCUSSION**

4. Process for New City Administrator

5. Goal Setting Session

**ADJOURN**

RESOLUTION NO. 2008 - \_\_\_\_\_

**RESOLUTION ENDING EMPLOYMENT AGREEMENT  
WITH CITY ADMINISTRATOR**

**WHEREAS**, The Mayor and Newton City Council have received the attached conditional resignation of the City Administrator and the attached Termination Agreement and Release of Claims, including attachment "A";

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Newton, Iowa, that

1. The City Council accepts the conditional resignation of the City Administrator; and
2. The City Council adopts and approves the Termination Agreement and Release of Claims, including attachment "A" and hereby directs the Mayor to execute said agreement; and
3. The City Council directs the Mayor and staff to implement the agreement.

**PASSED** this 11th day of April 2008.

**APPROVED** this \_\_\_\_\_ day of April 2008.

(SEAL)

\_\_\_\_\_  
Charles Allen, Mayor

ATTEST:

\_\_\_\_\_  
Candice Van Zee, CMC  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Darrin T. Hamilton, City Attorney

April 10, 2008

Mayor and City Council  
City of Newton  
101 West 4<sup>th</sup> Street South  
Newton, IA 50208

RE: Conditional Letter of Resignation

I, David Watson, hereby resign my position as City Administrator of the City of Newton Iowa conditioned upon the acceptance by the City of the termination agreement attached to this conditional resignation.

I have appreciated the high level of professionalism and dedication the staff has exhibited throughout my time with the City. I wish the City, its leaders, its staff much success in the future.

A handwritten signature in black ink, appearing to read 'David Watson', written in a cursive style.

David Watson, ICMA-CM

## TERMINATION AGREEMENT AND RELEASE OF CLAIMS

This Termination Agreement and Release of Claims ("Termination Agreement") is made and entered into by and between the City of Newton ("City"), and David Watson ("Watson").

1. Termination. Watson's employment with the City shall be terminated via resignation effective April 11, 2008 ("Termination Date"). The City shall pay Watson's regular salary and benefits through the Termination Date as set out below.

2. Definitions.

(a) "Claims" means all theories of recovery of whatever nature, whether known or unknown, and now recognized by the law or equity of any jurisdiction. This term includes causes of action, charges, indebtedness, losses, claims, liabilities, and demands, whether arising in equity or under the common law or under any contract or statute. This term includes any claim for salary, benefits or other compensation. This term includes, but is not limited to, any claims of discrimination, harassment, retaliation, retaliatory discharge, or wrongful discharge, and any other claim that is alleged or that could be alleged by Watson, or on Watson's behalf, in any lawsuit or other proceeding. This term includes, but is not limited to, claims and rights arising under Title VII of the Civil Rights Act of 1964, (42 U.S.C. § 2000e, *et seq.*), the Employee Retirement Income Security Act of 1974, (29 U.S.C. § 1001, *et seq.*), the Federal Rehabilitation Act of 1973, (29 U.S.C. § 701, *et seq.*), the Americans With Disabilities Act, (42 U.S.C. § 12101, *et seq.*), the Fair Labor Standards Act of 1938, (29 U.S.C. § 201, *et seq.*), the Labor - Management Relations Act, (29 U.S.C. § 141, *et seq.*), the Federal Occupational Safety and Health Act, (29 U.S.C. § 651, *et seq.*), the Fair Credit Reporting Act (15 U.S.C. § 1681, *et seq.*), the Older Workers' Benefit Protection Act, (29 U.S.C. § 621, *et seq.*), the Age Discrimination in Employment Act, (29 U.S.C. § 621, *et seq.*), the Family and Medical Leave Act (29 U.S.C. § 2601, *et seq.*), Iowa Wage Payment Collection Law (Iowa Code § 91A.1, *et seq.*), and the Iowa Civil Rights Act (Iowa Code § 216.1, *et seq.*).

(b) "Damages" means all elements of relief or recovery of whatever nature, whether known or unknown, which are recognized by the law or equity of any jurisdiction that is sought or that could be sought by Watson, or on Watson's behalf, in any lawsuit or other proceeding. This term includes actual, incidental, indirect, consequential, compensatory, exemplary, liquidated and punitive damages; rescission; attorneys' fees; interest; costs; equitable relief; and expenses.

(c) "Released Parties" means and includes the City, City Council and any and all related boards and entities, as well as all of the foregoing entities' present and future mayors, council members, attorneys, accountants, engineers, agents, appointees, employees and staff, in both their representative and individual capacities. Each of the Released Parties is an intended beneficiary of this Termination Agreement.

3. Consideration. In consideration for Watson's promises herein, the City shall continue to pay Watson up thru April 15, 2008, and then pay in one lump sum 3½ months severance. Said severance amount will equal the wages Watson would have received (except for sick leave, vacation and retirement benefits) through July 31, 2008 as set out in Exhibit "A" which is attached to this agreement.

(a) Pay an amount equal to Watson's accrued but unused vacation benefit up through April 15, 2008.

(b) Pay the full premiums for Watson's current insurance benefits, including health, dental, life and disability, through July 31, 2008.

The consideration set forth in this Section is collectively referred to as "Consideration." The Consideration shall be reported to the Internal Revenue Service in accordance with applicable law. The consideration set forth herein shall be provided irrespective of whether Watson obtains other employment. None of the Consideration shall be paid or provided to Watson should he revoke this Termination Agreement.

4. Watson Releases.

(a) Watson releases and discharges the Released Parties from all Claims and Damages, including those related to, arising from or attributed to (1) Watson's employment with the City, (2) the termination of such employment or service, and (3) all other acts or omissions related to any matter at any time prior to and including the date of his execution of this Termination Agreement.

(b) Watson understands and expressly agrees this release extends to all Claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, which Claims are arising from, attributable to, or related to Watson's employment with the City, the termination of such employment or service, or any alleged action or inaction of the Released Parties prior to and including the date of his execution of this Termination Agreement, and that all such Claims are hereby expressly settled or waived.

(c) *Watson further understands and expressly agrees that this release waives any Claims and rights he may have against any of the Released Parties under the Older Workers' Benefit Protection Act, (29 U.S.C. § 621, et seq.), and the Age Discrimination in Employment Act, (29 U.S.C. § 621, et seq.).*

(d) Watson agrees not to bring, or cause to be brought, any Claims against any of the Released Parties in any court or before any arbitral authority, or accept any Damages for any Claims against any of the Released Parties, which Claims are related to, arising from or attributed to Watson's employment with the City, the termination of such employment or service, and any other matter covered by the release in this Section. Watson represents and warrants that he has not brought or

caused to be brought any such Claims, or accepted any such Damages for any such Claims, against any of the Released Parties.

5. Released Parties Releases.

(a) The Released Parties release and discharge Watson from all Claims and Damages, including those related to, arising from or attributed to (1) Watson's employment with the City, (2) the termination of such employment or service, and (3) all other acts or omissions related to any matter at any time prior to and including the date of his execution of this Termination Agreement, excepting intentional misconduct and gross negligence on the part of Watson.

(b) Except as otherwise provided in section 5(a) of this Agreement, the Released Parties understand and expressly agree this release extends to all Claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, which Claims are arising from, attributable to, or related to Watson's employment with the City, the termination of such employment or service, or any alleged action or inaction of the Released Parties prior to and including the date of his execution of this Termination Agreement, and that all such Claims are hereby expressly settled or waived.

(c) The Released parties agree not to bring, or cause to be brought, any Claims against Watson in any court or before any arbitral authority, or accept any Damages for any Claims against any of the Released Parties, which Claims are related to, arising from or attributed to Watson's employment with the City, the termination of such employment or service, and any other matter covered by the release in this Section. The Released Parties represent and warrant that they, nor any of them, have not brought or caused to be brought any such Claims, or accepted any such Damages for any such Claims, against Watson.

6. Warranties.

(a) By Watson.

Watson agrees, represents and warrants that:

(i) the Consideration is not something to which he is otherwise indisputably entitled, is good and sufficient consideration for his execution of this Termination Agreement, and is paid by or on behalf of the Released Parties in full satisfaction and settlement of any Claims and Damages;

(ii) he is legally and mentally competent to sign this Termination Agreement;

(iii) he is the sole owner of any Claims that have been or could have been asserted, he has the requisite capacity and authority to make this Termination

Agreement, and no portion of any existing or potential Claims has been sold, assigned, pledged or hypothecated by him to any third party;

(iv) he presently possesses the exclusive right to receive all of the Consideration paid in exchange for this Termination Agreement;

(v) he shall not make disparaging remarks about, or slander or libel the City or the other Released Parties; provided that this Section shall not apply to comments made by Watson to any governmental entity or as required by law;

(vi) he does not possess any rights or claims to future employment with the City after the Termination Date, and agrees not to seek employment with the City; and

(vii) he will cooperate with, and assist, the City in defense of any claim, litigation or administrative proceeding brought against the City or any other Released Parties, related to or arising out of matters which occurred during his employment with the City. Such cooperation and assistance shall include (1) interviews of Watson by legal counsel for the City, (2) Watson providing documents (or copies thereof) and executing affidavits, (3) Watson appearing for depositions, trials, and other proceedings, and (4) Watson refusing to communicate with any party adverse to the City, or with a representative, agent or legal counsel for any such party, concerning any pending or future claims or litigation or administrative proceeding other than through legal counsel for the City. Nothing in this Paragraph is intended to cause Watson to testify other than truthfully in any proceeding or affidavit.

(b) By the City.

The City agrees, represents and warrants that:

(i) it shall not, and shall not authorize any person, to make disparaging remarks about or libel or slander Watson.

a. it shall not, unless otherwise authorized by Watson, respond to any inquiries by, or discuss with, any person or entity, including prospective employers, concerning or relating to Watson's employment with the City or his resignation therefrom or the circumstances giving rise to this Agreement, other than to confirm the dates of Watson's employment with the City and to state that he resigned therefrom effective April 11, 2008 for the reasons set out in the public statements made at the time the City accepts this resignation.

7. Choice of Law. This Termination Agreement shall be interpreted and construed in accordance with and shall be governed by the laws of the State of Iowa (without regard to any conflicts of law principle which would require the application of some other state law) and, when applicable, the laws of the United States.

8. Entire Agreement. This Termination Agreement constitutes the entire agreement of the parties relating to the subject matter hereof. Any previous agreements with respect to this subject matter are superseded by this Termination Agreement and are of no further force or effect. No term, provision or condition of this Termination Agreement may be modified in any respect except by a writing executed by both Watson and the City. No person has any authority to make any representation or promise on behalf of any of the parties not set forth in this Termination Agreement. This Termination Agreement has not been executed in reliance upon any representation or promise except those contained herein.

9. Acknowledgement of Terms. Watson acknowledges that he has carefully read this Termination Agreement; that he has had the opportunity for review of it by his attorney; that he fully understands its final and binding effect; that the City admits to no wrongdoing in connection with Watson's employment, the termination of such employment or service, or any other matter covered by this release; that this Termination Agreement is intended as a compromise of all Claims which Watson has alleged or may allege against any of the Released Parties; that the only promises or representations made to Watson to sign this Termination Agreement are those stated herein; and that he is signing this Termination Agreement voluntarily.

10. Waiver. The failure of either party to enforce or to require timely compliance with any term or provision of this Termination Agreement shall not be deemed to be a waiver or relinquishment of rights or obligations arising hereunder, nor shall this failure preclude the enforcement of any term or provision or avoid the liability for any breach of this Termination Agreement.


11. Severability. Each part, term or provision of this Termination Agreement is severable from the others. Notwithstanding any possible future finding by a duly constituted authority that a particular part, term or provision is invalid, void or unenforceable, this Termination Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

12. Costs and Attorneys' Fees. If either the City or Watson initiates action to enforce this Termination Agreement the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

13. Construction. This Termination Agreement shall be deemed drafted equally by all the parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Termination Agreement are only for convenience and are not intended to affect construction or interpretation. This Termination Agreement represents a compromise of disputed Claims and is not to be construed as an admission, direct or indirect, against any interest of the parties. The plural includes the singular and the singular includes the plural; "and" and "or" are each used both conjunctively and disjunctively; "any," "all," "each," or "every" means "any and all, and each and every;" "including" and "includes" are each "without

limitation;" and "herein," "hereof," "hereunder" and other similar compounds of the word "here" refer to the entire Termination Agreement and not to any particular paragraph, subparagraph, section or subsection.

14. Timing. Pursuant to the Older Workers Benefit Protection Act, ( 29 U.S.C. § 621 et seq.) *Watson understands and has been advised to consult with an attorney for advice prior to executing this Agreement and that he has a period of 21 days from the date he received this Agreement to consider and execute the Agreement. Watson further understands that he has the right to execute this Agreement before the end of said 21-day period, but is under no obligation to do so. Should Watson decide to execute the Agreement, he shall have the right to revoke this Agreement within seven days following the date on which he signs it, and the Agreement shall not become effective or enforceable—and no consideration shall be paid—until this seven-day period has expired without revocation.*

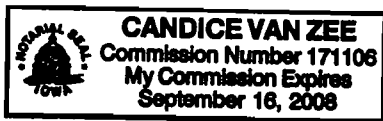
David Watson  
  
Date: 4/10/08

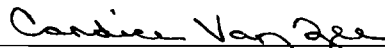
The City of Newton  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF IOWA                    )  
  )  
COUNTY OF JASPER    )

This instrument was signed before me by David Watson on this 10<sup>th</sup> day of April, 2008.



  
Notary Public in and for the State of Iowa  
My Commission Expires: 9-16-08

**ACKNOWLEDGMENT**

STATE OF IOWA                    )  
  )  
COUNTY OF JASPER    )

This instrument was signed before me by \_\_\_\_\_ on this \_\_\_ day of April, 2008.

\_\_\_\_\_  
Notary Public in and for the State of Iowa  
My Commission Expires: \_\_\_\_\_

EXHIBIT A

	Gross	Net
<u>REGULAR PAYCHECK</u>		
Paycheck payable 4-15-08	\$4,075.00	\$2,608.06
<u>PAYMENT TO JULY 31, 2008 (3½ months)</u>		
Salary (7 payrolls after April 15 to July 31, 2008)		
\$91,800 / 24 pay periods in a year *7 remaining pay periods	26,775.00	15,284.76
<u>VACATION</u>		
Vacation accrual as of 4-15-08		
209.5 hours x \$44.13002	<u>9,245.24</u>	<u>6,126.37</u>
GRAND TOTAL	\$40,095.24	\$24,019.19

Watson will inform the payroll department on the appropriate federal and states taxes to withhold.