

## **APPENDIX B**

### **REAFFIRMATION OF SEPARATION AND GENERAL RELEASE AGREEMENT**

#### **TO BE EXECUTED ON OR AFTER RETIREMENT DATE**

1. Capitalized terms used but not defined in this Reaffirmation of Separation and General Release Agreement ("Reaffirmation") shall have the meaning set forth in the Separation and General Release Agreement (the "Separation Agreement") among Miguel A. Martinez ("EMPLOYEE") and the City of Hallandale Beach, Florida ("CITY"), an executed copy of which is attached hereto.

2. EMPLOYEE hereby affirms the validity of the general release of the CITY (including but not limited to, its current and former employees, agents, administrators, representatives, City Commission, successors and assigns) set forth in Paragraph Two (2) of the Separation Agreement and all other provisions of the Separation Agreement. EMPLOYEE also affirms that EMPLOYEE is not in default of any provision of the Separation Agreement. EMPLOYEE acknowledges that the Separation Agreement is complete, true, accurate, valid and in full force and effect as of the date below.

3. CITY hereby affirms the validity of the general release of EMPLOYEE set forth in Paragraph Two (2) of the Separation Agreement and all other provisions of the Separation Agreement. CITY also affirms that CITY is not in default of any provision of the Separation Agreement. CITY acknowledges that the Separation Agreement is complete, true, accurate, valid and in full force and effect as of the date below.

4. In consideration of the compensation contained in Paragraph Five (5) below, EMPLOYEE hereby unconditionally and irrevocably releases, waives, discharges and gives up, to the full extent permitted by law, any and all Claims (as defined below) that EMPLOYEE may have against the CITY (including but not limited to, its current and former employees, agents, administrators, representatives, City Commission, successors and assigns), arising on or prior to the date of EMPLOYEE's execution and delivery of this Reaffirmation to the CITY. "Claims" shall have the meaning set forth in Paragraph Two (2) of the Separation Agreement. This Section 3

releases all Claims including those of which EMPLOYEE is not aware and those not mentioned in the Separation Agreement or this Reaffirmation. EMPLOYEE specifically releases any and all Claims arising out the Employment Agreement or the termination thereof or EMPLOYEE's employment with CITY or separation therefrom. EMPLOYEE expressly acknowledges and agrees that, by entering into this Reaffirmation, EMPLOYEE is releasing and waiving any and all Claims, including, without limitation, Claims that EMPLOYEE may have arising under the Age Discrimination in Employment Act ("ADEA"), which have arisen on or before the date of EMPLOYEE's execution and delivery of this Reaffirmation to the CITY.

5. In consideration of EMPLOYEE's execution of the release contained in this agreement, CITY agrees to pay EMPLOYEE an amount equal to one week of his compensation, five thousand seven hundred thirty-three dollars (\$5,733).

EMPLOYEE understands that he will not receive the consideration provided for in this paragraph unless and until he executes this Reaffirmation and the seven (7) day revocation period set forth in Paragraph Eight (8) of this Reaffirmation expires.

6. The CITY and EMPLOYEE acknowledge and agree that:

(a) By entering in the Separation Agreement and this Reaffirmation, EMPLOYEE does not waive any rights or Claims that may arise after the date that EMPLOYEE executes and delivers this Reaffirmation to the Company;

(b) Nothing in the Separation Agreement or this Reaffirmation shall preclude EMPLOYEE from exercising EMPLOYEE's rights, if any (i) under Section 601-608 of the EMPLOYEE Retirement Income Security Act of 1974, as amended, popularly known as COBRA, or (ii) EMPLOYEE's retirement plans.

7. EMPLOYEE represents and warrants that he:

(i) has had sufficient opportunity to consider this Reaffirmation,

(ii) has read this Reaffirmation,

(iii) understands all the terms and conditions hereof,





(iv) is not incompetent or had a guardian, conservator or trustee appointed for him,  
(v) has entered into this Reaffirmation Agreement of his own free will and volition,  
(vi) has duly executed and delivered this Reaffirmation,  
(vii) understands that he is responsible for EMPLOYEE's own attorney's fees and costs,  
(viii) has had the opportunity to review this Reaffirmation with counsel of his choice or has  
chosen voluntarily not to do so,

(ix) understands that he has been given more than twenty-one (21) days to review this  
Reaffirmation before signing it and understands that if EMPLOYEE does not sign and return this  
Reaffirmation to the CITY (Attn: Roger M. Carlton, City Manager) on, or within five (5) days  
following (but not before), the Retirement Date, EMPLOYEE shall not be entitled to the benefit  
provided for under Paragraph Four (4)(B) of the Separation Agreement and restated in Paragraph  
Five (5) above, the Retirement Date shall be unaltered and the executed Separation Agreement  
and General Release will remain unaltered, and

(x) understands this Reaffirmation is valid, binding and enforceable against EMPLOYEE  
in accordance with its terms.

8. **Seven Day (7) Period to Revoke.** EMPLOYEE understands that he can revoke  
his Reaffirmation Agreement within seven (7) calendar days after he signs it. (The seven (7) day  
revocation period is counted by calendar days. If the seventh (7th) day falls on a Saturday,  
Sunday or legal holiday, the seventh (7th) day will be the next business day). Any revocation  
within this period must be in writing and must be received by the CITY's City Manager, Mr. Roger  
Carlton, by 5:00 p.m. on the seventh (7th) day following his execution of the Agreement. If  
EMPLOYEE revokes this Reaffirmation, it shall not be effective or enforceable, EMPLOYEE shall  
not be entitled to the Severance Pay provided for under Paragraph Four (4)(B) of the Separation  
Agreement and restated in Paragraph Five (5) above, the Retirement Date shall be unaltered and  
the executed Separation Agreement and General Release will remain unaltered.



9. **Effective Date.** This agreement will become effective upon the execution of this agreement by EMPLOYEE and the expiration of the seven (7) day revocation period. After the seven (7) day revocation period has expired, and if EMPLOYEE has not revoked this agreement, the CITY will execute this agreement.

10. **Action for Breach of Agreement.** In the event either party to this agreement institutes legal proceedings for breach of the terms of this agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, not by a jury, in Broward County, Florida. The parties agree that if any litigation arises regarding a breach and/or the interpretation or enforcement of this agreement, the prevailing party will be entitled to recover all reasonable costs and attorneys' fees incurred in such litigation.

11. **Amendment.** This Agreement may not be amended except by written agreement signed by all parties.

THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS REAFFIRMATION AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO THIS AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF COMPROMISE BETWEEN THE CITY AND EMPLOYEE. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THE BENEFITS SET FORTH ABOVE, EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLEMENT ALL CLAIMS HE HAS OR MIGHT NOW HAVE AGAINST THE CITY FROM THE BEGINNING OF TIME UNTIL THE EFFECTIVE DATE OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Reaffirmation as of the date set forth below.

EMPLOYEE



Miguel A. Martinez

CITY OF HALLANDALE BEACH



By: Roger M. Carlton, City Manager

Date: 2/21/18  
(ON OR AFTER RETIREMENT DATE)

Witnesses:

Radu Dodea  
PRINT NAME: RADU DODEA

Ava Vega  
PRINT NAME: Ava Vega

Date: 2/21/18

ATTEST:

M. Bataille  
Mario Bataille, CMC, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY  
AND FORM FOR THE CITY ONLY

Jennifer Merino  
JENNIFER MERINO  
CITY ATTORNEY

## **SEPARATION AGREEMENT AND GENERAL RELEASE**

This Separation Agreement and General Release ("Agreement") is entered into by and between Miguel A. Martinez ("EMPLOYEE") and the City of Hallandale Beach, Florida, including but not limited to its current and former employees, agents, administrators, representatives, commissioners, successors and assigns (collectively, the "CITY").

WHEREAS, EMPLOYEE is employed by the CITY as Assistant Chief of Police;

WHEREAS, subject to the terms of this agreement, EMPLOYEE desires to retire from his CITY employment and, to that end, has executed the retirement letter attached as Appendix A hereto; and

WHEREAS, the CITY has agreed to accept EMPLOYEE's retirement effective February 19, 2018; and

WHEREAS, EMPLOYEE and CITY desire to establish the terms of EMPLOYEE's continued employment from October 14, 2017, through and including February 19, 2018.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, EMPLOYEE and the CITY, intending to be legally bound, agree to the following:

1. **Separation from Employment.** Effective October 14, 2017, EMPLOYEE agrees to remain with the CITY as Police Legal Advisor until and including January 5, 2018. EMPLOYEE will be assigned special projects as directed by the City Manager. EMPLOYEE agrees to be on call as necessary and will be available on 24 hours' notice during regular business hours to meet with the City Manager at least once per week to receive assignments and report progress. Effective January 5, 2018, through and including February 19, 2018, CITY and EMPLOYEE agree EMPLOYEE will be on vacation status, exhausting 248 hours of regular vacation leave. On February 19, 2018 ("Retirement Date"), EMPLOYEE will retire from the CITY under the Early Retirement terms of the City's Police and Fire Pension Plan. At all times during the time period addressed in this paragraph, EMPLOYEE will remain a full-time sworn law

enforcement officer for the CITY and the CITY agrees to retain and provide EMPLOYEE with his current compensation, including fringe benefits, as applicable to all Tier 2 management employees of the Police Department, through February 19, 2018. EMPLOYEE agrees to fully and faithfully execute all responsibilities attendant to his position until the Retirement Date, at which time he will return all city equipment, official identification, weapons and badges.

2. **Full and General Waiver of All Rights and Claims.** With the singular exception of current or future Workers Compensation Claims, EMPLOYEE hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the CITY (including, but not limited to, its current and former employees, agents, administrators, representatives, City Commission, successors and assigns) from the beginning of the world until the Effective Date of this Agreement, including, but not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Age Discrimination in Employment Act;
- The Older Works Benefit Protection Act;
- Florida Wage and Hour laws;
- Florida and federal whistle-blower laws, including § 112.3187, Florida Statutes;
- The Internal Revenue Code;
- The Rehabilitation Action;
- The Consolidated Omnibus Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Family and Medical Leave Act of 1993;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance; or
- Any public policy, contract or common law claims, including any tort claims (e.g., negligent or intentional infliction of emotional distress; negligent retention; supervision or training; defamation; assault; battery; false imprisonment; wrongful termination; loss of consortium; etc.) whether based on common law or otherwise.



EMPLOYEE also acknowledges and agrees that this release and waiver bars any claim or demand from damages, costs, fees, or other expenses, including attorneys' fees, incurred in connection with his employment with the CITY, his separation from that employment, or with any of the above-referenced claims. EMPLOYEE understands and agrees that with respect to the claims he is waiving in this Agreement, he is waiving not only the right to recover money or other relief in any action he might institute, but also that he is waiving any right to recover money or any other relief whatsoever in any action that might be brought on his behalf by any other person or entity; including but not limited to, the United States Equal Employment Opportunity Commission or any other federal, state or local government agency or department.

EMPLOYEE understands that the foregoing list of causes of action which have been waived is meant to be illustrative rather than exhaustive, and understands and acknowledges that he is waiving and releasing the CITY from any and all causes of action of any nature whatsoever (with the limited exception of current and future Workers Compensation Claims). It is EMPLOYEE's intention to fully, finally and forever resolve and release any and all disputes he may have or believe himself to have against the CITY with respect to any alleged acts occurring before the Effective Date of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected, with the limited exception of current or future Workers Compensation claims.

3. **Covenant Not to Sue.** EMPLOYEE represents and agrees that he will not hereinafter pursue, initiate, or cause to be instituted any dispute released herein against the CITY, and represents that he has not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person, any dispute released by him herein.

4. **Consideration.**

(A) In consideration of EMPLOYEE's waiver and release of all claims against the CITY as stated in Paragraph Two (2) of this Agreement, the CITY agrees to retain and provide





EMPLOYEE with his current compensation, including fringe benefits, as set forth in Paragraph One (1) of this Agreement. The CITY also agrees EMPLOYEE will retire in good standing under the early retirement provisions of the CITY's Police and Fire Pension Plan at the rank of Assistant Chief and be entitled to all the rights and privileges normally afforded retirees of the Police Department.

(B) **Consideration for Subsequent Reaffirmation Agreement.** Upon execution of Appendix B of this Agreement, the "Reaffirmation of Separation and General Release" ("Reaffirmation"), (to be executed no earlier than the Retirement Date) CITY further agrees to pay EMPLOYEE an amount equal to one week of his compensation, five thousand seven hundred thirty-three dollars (\$5,733) ("Severance Pay"). Severance Pay will be paid out in accordance with the terms contained in Appendix B.

EMPLOYEE understands that he will not receive the consideration provided for in subparagraph A until he executes this agreement and the seven (7) day revocation period set forth below expires. EMPLOYEE understands that he will not receive the consideration provided for in subparagraph B unless and until he executes the Reaffirmation and the seven (7) day revocation period set forth in Paragraph Eight (8) of the Reaffirmation expires. Nothing in this paragraph, including but not limited to failure to agree to the Reaffirmation contained in Appendix B, should be interpreted to effect, rescind, terminate, diminish, or relegate the release encompassed this Agreement.

The parties agree and acknowledge that the above agreement constitutes good, valuable and sufficient consideration for EMPLOYEE's full waiver and release of all claims, and his fulfilling all other promises as set forth herein. EMPLOYEE acknowledges that without this Agreement, he will not otherwise be entitled to the consideration he is receiving pursuant to this Agreement.

5. **Retirement Eligibility.** This Agreement shall have no effect on EMPLOYEE's retirement eligibility. The terms of EMPLOYEE's retirement are as set forth in the CITY's Police

and Fire Pension Plan consistent with EMPLOYEE's credited service and all other Plan terms as of EMPLOYEE's Retirement Date.

6. **Tax Consequences.** No representations have been made regarding the taxability of all or any portion of this Agreement. Each Party has had the opportunity to seek independent advice regarding the tax consequences of this Agreement, and accepts responsibility for the satisfaction of any tax obligation that may result from this Agreement.

7. **Cooperation.** The EMPLOYEE agrees that it is an essential term of this Agreement that the EMPLOYEE cooperate with the CITY and its counsel at all times regarding any internal or external claims, charges, audits, investigations, and/or lawsuits, regardless of when filed, involving the CITY of which the EMPLOYEE may have knowledge or in which the EMPLOYEE may be a witness. Such cooperation includes meeting with the CITY representatives and counsel to disclose such facts as the EMPLOYEE may know; preparing with the CITY's counsel for any deposition, trial, hearing, or other proceeding; attending any deposition, trial, hearing or other proceeding to provide truthful testimony; and providing other assistance to the CITY and its counsel in the defense or prosecution of litigation as may, in the sole judgment of the CITY's counsel, be necessary. The CITY agrees to reimburse the EMPLOYEE for reasonable and necessary out-of-pocket expenses incurred by the EMPLOYEE in the course of complying with this obligation, in each case that are pre-authorized by the CITY. Nothing in this paragraph should be construed in any way as prohibiting or discouraging the EMPLOYEE from testifying truthfully under oath as part of, or in connection with, any such proceeding. The CITY further agrees to represent EMPLOYEE in any future action naming him in his official capacity as employee of the CITY.

8. **Time to Consider Signing Agreement.** EMPLOYEE acknowledges that he has been given a reasonable period of time of not less than twenty-one (21) days with which to decide whether to sign this Agreement. EMPLOYEE understands and agrees that any changes



or amendments to this Agreement, whether material or not, will not re-start the twenty-one (21) day period. EMPLOYEE understands and agrees that he can use all or any part of the twenty-one (21) day period to decide whether to sign this Agreement. EMPLOYEE further acknowledges that he has, in fact, taken a reasonable period of time to consider this Agreement.

9. **Seven (7) Day Period to Revoke.** EMPLOYEE understands that he can revoke this Agreement within seven (7) calendar days after he signs it. (The seven (7) day revocation period is counted by calendar days. If the seventh (7<sup>th</sup>) day falls on a Saturday, Sunday or legal holiday, the seventh (7<sup>th</sup>) day will be the next business day). Any revocation within this period must be in writing and must be received by the CITY's City Manager, Mr. Roger Carlton, by 5:00 p.m. on the seventh (7<sup>th</sup>) day following his execution of the Agreement. EMPLOYEE understands and agrees that, in the event that he revokes this Agreement, this Agreement will become null and void, and the CITY will owe nothing pursuant to this Agreement.

10. **Effective Date.** This agreement will become effective upon the execution of this Agreement by EMPLOYEE and the expiration of the seven (7) day revocation period. After the seven (7) day revocation period has expired, and if EMPLOYEE has not revoked this Agreement, the CITY will execute this Agreement.

11. **Non-Admission of Wrongdoing.** The parties agree that neither this Agreement nor the furnishing of any consideration under this Agreement shall be construed as an admission by any party of any wrongdoing, liability or unlawful conduct.

12. **Consultation with Legal Counsel.** EMPLOYEE acknowledges that he has been encouraged by the CITY to consult with an attorney of his choice regarding the terms of this Agreement before signing this agreement.

13. **Governing Law and Severability.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If any provisions of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction, and if it cannot be

modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party. If the waiver language of this Agreement is declared unenforceable because of actions taken by EMPLOYEE or on his behalf, EMPLOYEE shall return all monies paid to him under this Agreement and this Agreement shall immediately become null and void, and the CITY will owe nothing further pursuant to the Agreement.

14. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the parties, except as otherwise specified in this Agreement. EMPLOYEE acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with his decision to sign this Agreement except for those set forth in this Agreement.

15. **Action for Breach of Agreement.** In the event either party to this Agreement institutes legal proceedings for breach of the terms of this Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, not by a jury, in Broward County, Florida. The parties agree that if any litigation arises regarding a breach and/or the interpretation or enforcement of this Agreement, the prevailing party will be entitled to recover all reasonable costs and attorneys' fees incurred in such litigation.

16. **Amendment.** This Agreement may not be amended except by written agreement signed by all parties.

17. **Acknowledgment.** EMPLOYEE acknowledges that he has carefully read and understands this Agreement consisting of eight (8) pages and agrees that the CITY has not made any representations to him other than those contained herein. EMPLOYEE also acknowledges that he enters into this Agreement voluntarily, without any pressure or coercion and with full



knowledge of its significance, and this Agreement constitutes a full and absolute settlement and bar as to any and all claims he/she had, has, or may have against the CITY.

THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO THIS AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF COMPROMISE BETWEEN THE CITY AND EMPLOYEE. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THE BENEFITS SET FORTH ABOVE, EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLEMENT ALL CLAIMS HE HAS OR MIGHT NOW HAVE AGAINST THE CITY FROM THE BEGINNING OF TIME UNTIL THE EFFECTIVE DATE OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below.

EMPLOYEE

  
Miguel A. Martinez

Date: 10/26/17

Witnesses:

  
PRINT NAME: LISA KELLY


  
PRINT NAME: MINERVA OZOZA

CITY OF HALLANDALE BEACH

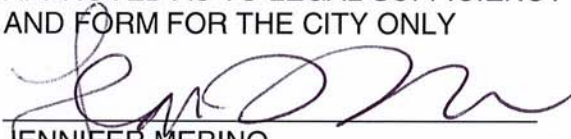
By:   
Roger M. Carlton, City Manager

Date: 11/3/17

ATTEST:

  
Mario Bataille, CMC, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY  
AND FORM FOR THE CITY ONLY

  
JENNIFER MERINO  
CITY ATTORNEY