


CITY OF HALLANDALE BEACH, FLORIDA  
MEMORANDUM

CITY OF HALLANDALE  
CITY MANAGER

2017 AUG 10 PM 3:24

SEP 20 '17 PM 1:14

**DATE:** August 10, 2017  
**TO:** Roger M. Carlton, City Manager  
**FROM:** Dwayne S. Flournoy, Chief of Police   
**SUBJECT:** Separation Agreement

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Attached hereto are two signed separation agreements. Please sign and forward for all appropriate signatures where indicated. Once fully signed, please return one signed agreement back to my attention.

Thank You.

Reviewed:



Roger M. Carlton, City Manager

8/11/17

Date

☒ Approved

☐ Denied

☐ Hold for Discussion

Comments:

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## **SEPARATION AGREEMENT AND GENERAL RELEASE**

This Separation Agreement and General Release ("Agreement") is entered into by and between Dwayne Flournoy ("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 Police Chief;

WHEREAS, EMPLOYEE desires to resign from his CITY employment and, to that end, has executed the resignation letter attached as Appendix A hereto; and

WHEREAS, the CITY has agreed to accept EMPLOYEE's resignation, but wishes to retain EMPLOYEE until the commencement of employment of EMPLOYEE's replacement and thereafter as a Special Advisor to the City Manager until February 28, 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.** EMPLOYEE agrees to remain employed as Police Chief until the commencement of employment of his replacement ("Resignation Date"), and thereafter as Special Advisor to the City Manager until February 28, 2018 ("Separation Date"). Effective on the Separation Date, EMPLOYEE will cease all employment with the CITY. EMPLOYEE agrees to remain as Police Chief until the earlier of 1) the CITY's selected replacement commences employment or 2) until September 30, 2017. CITY agrees that the Resignation Date will be no earlier than September 30, 2017. EMPLOYEE agrees to fully and faithfully execute all responsibilities attendant to his position as Police Chief until the Resignation 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 Act;
- 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, through the Resignation Date. Thereafter, the CITY agrees to retain EMPLOYEE as Special Advisor to the City Manager at his current base monthly rate until the Separation Date. During this period as Special Advisor, the EMPLOYEE will not be eligible for any benefits, accruals or retirement contributions, with the exception of the health insurance benefit offered to Tier I employees. As Special Advisor, EMPLOYEE agrees to meet with the City Manager at least once a week to receive assignments and report progress. The City Manager may require more meetings as necessary.

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(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 Separation Date) CITY further agrees to continue to pay for EMPLOYEE's health insurance plan up to an amount equal to six weeks of his base compensation, nineteen thousand ninety-six dollars and eighty cents (\$19,096.80) ("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 Funds.** The CITY agrees to pay, and EMPLOYEE agrees to accept, all monies owed by the CITY towards EMPLOYEE's retirement accounts by the Resignation 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

  
\_\_\_\_\_  
Dwayne Flournoy

Date: 8/10/17

Witnesses:

  
\_\_\_\_\_  
PRINT NAME: Michelle Dimitri


  
\_\_\_\_\_  
PRINT NAME: JANISE S. LOUIS

CITY OF HALLANDALE BEACH

By:   
\_\_\_\_\_  
Roger M. Carlton, City Manager

Date: 8/11/17

ATTEST:

  
\_\_\_\_\_  
Mario Batalle, CMC, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY  
AND FORM FOR THE CITY ONLY

  
\_\_\_\_\_  
JENNIFER MERINO  
CITY ATTORNEY