

RESOLUTION No. 19-34

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, ACCEPTING THE LETTER SUBMITTED BY CITY MANAGER EDWARD ROJAS AND APPROVING THE SEPARATION AGREEMENT AND SEVERANCE PACKAGE BETWEEN THE CITY AND MR. EDWARD ROJAS; AUTHORIZING THE MAYOR TO EXECUTE ALL NECESSARY DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 9th, 2014, Edward Rojas was selected as City Manager for the City of Doral; and

WHEREAS on January 23, 2019 Mr. Rojas submitted a letter to the Mayor, (a copy of which is attached hereto as Exhibit A), notifying the City that he would be stepping down from his position effective January 25, 2019; and

WHEREAS, the City Council believes that acceptance of the letter and approval a Separation Agreement and severance package is in the best interests of the City and its residents.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

Section 2. Approval. The Separation Agreement between the City and Edward A. Rojas, attached as Exhibit "A", is hereby approved.

Section 3. Authorization. The Mayor is authorized to execute the Separation Agreement on behalf of the City. The funds to pay the severance payment of \$81,111.66 will come from Contingency Reserve Account, #001.50005.500492.

Section 4. Implementation. The City Attorney is hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Vice Mayor Mariaca and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Claudia Mariaca	Yes
Councilwoman Digna Cabral	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	No

PASSED AND ADOPTED this 29 day of January, 2019.

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK



JUAN CARLOS BERMUDEZ, MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY

EXHIBIT “A”

SEPARATION AGREEMENT

This Separation Agreement (the "Agreement") is a contract between Edward A. Rojas ("Employee") and City of Doral ("City"). Employee and the City wish to separate on an amicable basis. Employee's last working day will be January 25, 2019 (the "Termination Date").

THEREFORE, in consideration of the foregoing and this Agreement's mutual promises, the sufficiency of which is acknowledged, the Parties agree as follows:

I. SEVERENCE AND PAYMENT OF ACCRUED SALARY AND BENEFITS.

A. Separation Payments. The City will pay Employee twenty (20) weeks compensation in the amount of \$81,111.66, payable provided both Parties have signed this Agreement, the Revocation Period referred to in section IV D. below has passed without prior revocation, Employee has returned all City property. Employee will comply with non-disparagement as required by this Agreement. The Separation payment will be made on or before February 23, 2019. The separation payment made pursuant to this section is not considered regular compensation for services performed and is therefore not eligible for deferral under the City's 401(a) or deferred compensation plans.

B. Accrued Unpaid Salary and Benefits. The City shall pay the City Manager all accrued compensation due to the Employee up to his final day of employment within ten (10) days of his resignation date as required under Section 5 of Employee's Employment Agreement.

C. Insurance Coverage Eligibility.

1. Employee's eligibility to participate in the City's Medical, Dental, and Vision benefit plans will terminate on the last day of the month in which the Termination Date occurs.

2. Employee may elect to participate in Medical, Dental, and Vision benefits provided through an outside vendor, in conjunction with continued insurance coverage available to Employee under the provisions of the Consolidated Omnibus Budget Reconciliation Act ("COBRA") at COBRA rates for up to eighteen (18) months. Employee will be mailed a COBRA packet at Employee's last known address. Employee must elect COBRA coverage in order to have COBRA coverage. Employee shall make monthly premium payments to the provider to ensure continuation of COBRA coverage. Coverage may end permanently if premiums are not paid in a timely manner.

D. Unemployment. The City will not contest Employee's claim to unemployment compensation. The City may state that Employee is receiving or has received \$81,111.66 (the equivalent of twenty (20) weeks of Severance Pay under this Agreement) and that Employee voluntarily resigned.

E. Dependent Care or Medical Flexible Spending Account, Other Insurance Coverage, Participation in 401(k) Plan. Any Dependent Care or Medical Flexible Spending Account participation will cease on the last day of the month in which the Termination Date occurs. Any group long-term disability insurance coverage will cease on the last day of the month in which Termination Date occurs. Any Group Life and Accidental Death and

Dismemberment Insurance Coverage will cease on the Termination Date. Conversion of any employee life insurance or long-term disability insurance coverage to an individual policy or policies (at Employee's expense) must be accomplished with an application submitted by Employee to the carrier within 31 days of the termination of insurance coverage. The terms of the City's 401(k) Plan and any amounts due Employee under such Plan are unaffected by this Agreement.

F. References. In response to requests for references from prospective employers, the City will provide only the dates of Employee's employment and positions held.

II. EMPLOYEE'S AGREEMENTS.

A. Release of All Claims. The term "Releasee" or "Releasees" shall be construed as broadly as possible and includes: the City and each of the elected officials, Charter officers and, employees, and all other persons acting by, through, under or in concert with any of them (Releasees). In consideration for the City's consideration, Employee fully releases and discharges the Releasees from all claims, actions and causes of action of any kind, known or unknown, which Employee may presently have or claim to have against any Releasee including, but not limited to, all contract claims; all wrongful discharge or employment claims; all tort claims; all claims arising under the United States, or Florida constitutions; all claims under the Civil Rights Act, Equal Pay Act, Age Discrimination in Employment Act, Older Workers Benefit Protection Act, Rehabilitation Act, Americans with Disabilities Act, Family and Medical Leave Act, Fair Labor Standards Act, Fair Credit Reporting Act, Occupational Safety and Health Act, Florida Wage Payment laws, and The Florida Civil Rights Act of 1992; all claims arising under any other civil rights or employment laws or regulations (whether federal, state or local); any federal or state whistleblower laws or statutes; any claims based on City policies, including severance policies; and all claims to attorney fees or costs. This Agreement and Release shall not be construed to waive or release Employee's rights under the City's employee benefit plans applicable to Employee as of the Termination Date.

B. Filing Claims in Future. Employee has not filed any charge, claim, or complaint of any kind against any Releasee. Employee shall not file any charge, claim or complaint against any Releasee seeking personal recovery or personal injunctive relief ("Personal Claim"). Employee shall defend and indemnify the Releasees and hold the Releasees harmless from and against any Personal Claim Employee files (including attorneys' fees and costs). Nothing in this Agreement shall prohibit the Parties to this Agreement from bringing an action to enforce the terms of this Agreement; or prohibit Employee from filing a timely charge or complaint with the EEOC or participating in any investigation or proceeding conducted by the EEOC (although Employee has waived any right to personal recovery or personal injunctive relief in connection with any such charge or complaint).

C. Non-Assignment of Claims. Employee has not assigned or transferred any claim or any part or portion thereof ("Assigned Claim"). Employee shall defend and indemnify the Releasees and hold the Releasees harmless from and against any Assigned Claim (including attorneys' fees and costs).

D. Representations. Employee represents and warrants that Employee was permitted by the City to take all leave to which Employee was entitled, that Employee has been properly paid for all time worked while employed by the City and that Employee has received all benefits to which Employee was or is entitled. Employee represents and warrants that

Employee knows of no facts and has no reason to believe that Employee's rights under either the Fair Labor Standards Act or the Family and Medical Leave Act have been violated.

E. Tax Responsibility. Employee shall be liable for any and all taxes that may be due on amounts paid or benefits provided by the City. Employee shall defend and indemnify the City and hold the City harmless from and against any claim (including attorneys' fees and costs) for any tax liability the City might incur as a result of any consideration provided to Employee pursuant to this Agreement.

F. Non-Disparagement. For purposes of this Section, "disparage" shall mean any negative statement, whether written or oral, about Employee, the City, its elected officials, Charter officers, department directors, or employees. The City will not disparage Employee or Employee's performance or otherwise take any action which could reasonably be expected to adversely affect Employee's personal or professional reputation. Similarly, Employee will not disparage the City or any of its elected officials, Charter officers, department directors, or employees or otherwise take any action including but not limited to engaging in disparaging communications made or transmitted on the internet or social media sites.

G. Return of City Property. Employee has returned the City vehicle, access card, badges, cell phone, computers, equipment or other property belonging to the City. Employee shall certify under oath that Employee has returned to the City all City property in Employee's possession.

H. Cooperation with Litigation or Other Legal Matters. Employee acknowledges that Employee may have factual information or knowledge that may be useful to the City in connection with current or future legal, regulatory or administrative proceedings. Employee will fully cooperate with the City in the defense or prosecution of any such claims. Employee's cooperation shall include being reasonably available to meet with counsel to prepare for discovery or trial and to testify truthfully as a witness. The City will not compensate Employee for testifying as a fact witness but may reimburse Employee for reasonable expenses associated with travel, meals, lodging or other out of pocket expenses.

I. Injunctive and Other Relief. Employee agrees and acknowledges that any violation of this Agreement shall constitute a material breach of this Agreement likely to cause irreparable harm to the City. Therefore, Employee agrees that any such breach or threatened breach by Employee shall give the City the right to specific performance through injunctive relief requiring Employee to comply with Employee's obligations under this Agreement in addition to any other relief or damages allowed by law. In addition, if the City may seek recovery of the paid Separation Payment or other paid consideration, shall not void Employee's release of claims under this Agreement, which shall remain in full force and effect.

III. DENIAL OF ANY LIABILITY.

The City denies any liability to Employee. The Parties agree that this Agreement may not be used as evidence; does not constitute an adjudication or finding on the merits; and is not, and shall not be construed as, an admission by the City of a breach of any contract or agreement; a violation of the City's policies and procedures; or a violation of any state or federal laws or regulations. After execution (including signatures by both Employee and the City), this Agreement may be introduced in evidence to enforce its terms.

IV. OPPORTUNITY TO CONFER AND OBTAIN ADVICE FROM OTHERS, INCLUDING ATTORNEYS.

A. Input from Both Parties. The terms of this Agreement have been negotiated with input from both Employee and the City. The Agreement shall not be interpreted in favor of either the Employee or the City.

B. Opportunity to Confer. The City advises Employee to confer with an attorney of Employee's own choosing before entering into this Agreement. Employee represents that Employee has had a full opportunity to confer with an attorney and, if Employee has not done so, Employee has knowingly and voluntarily waived the right to confer with an attorney before entering into this Agreement.

C. Opportunity to Consider. Employee may take up to twenty-one days (21) to consider whether to execute this Agreement, after which, if this Agreement has not yet been executed, the City's offer to enter into this Agreement shall automatically expire. If Employee signs this Agreement prior to the expiration of the twenty-one (21) day consideration period, Employee represents that Employee fully understands that Employee has been given the opportunity to take at least twenty-one (21) days within which to consider whether to enter into this Agreement and has knowingly and voluntarily waived that opportunity.

D. Opportunity to Revoke. Employee has the opportunity to revoke this Agreement within seven (7) days after signing it ("Revocation Period"), by delivering a written revocation to the City Attorney. If this Agreement is revoked by Employee, it will be revoked in its entirety. Revocation will be effective only upon return of any consideration provided by the City under Section I A. above. This Agreement shall not be effective until the Revocation Period has passed without revocation and both Parties have signed the Agreement.

V. COMPLETE AGREEMENT.

This Agreement, constitutes and contains the entire agreement and understanding between the Parties, and supersedes and replaces all prior negotiations and all agreements concerning the subject matters hereof.

VI. SEVERABILITY OF INVALID PROVISIONS.

The provisions of this Agreement are severable. If any provision of this Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provisions or application.

VII. VENUE/CHOICE OF LAW/ATTORNEYS' FEES/WAIVER OF RIGHT TO TRIAL BY JURY.

Any dispute arising under this Agreement or arising out of Employee's employment relationship with the City shall be brought in Miami-Dade County, Florida. This Agreement has been negotiated within the State of Florida and the rights and obligations of the Parties to this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Florida without regard to any jurisdiction's principles of conflict of laws. In any action brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, and the action shall be tried to a court without a jury.

VIII. NO WAIVER OF BREACH.

No waiver of any breach of any term or provision of this Agreement shall be binding unless in writing and signed by the party waiving the breach. No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement.

IX. KNOWING AND VOLUNTARY WAIVER.

Employee has carefully read and fully understands all of the provisions of this Agreement. Employee knowingly and voluntarily enters into this Agreement.

X. FURTHER ASSURANCES.

The parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force to the terms of this Agreement.

EMPLOYEE HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL THE PROVISIONS OF THIS AGREEMENT. EMPLOYEE REPRESENTS THAT EMPLOYEE IS ENTERING INTO THIS AGREEMENT VOLUNTARILY AND THAT THE CONSIDERATION EMPLOYEE RECEIVES IN EXCHANGE FOR EXECUTING THIS AGREEMENT IS GREATER THAN THAT TO WHICH EMPLOYEE WOULD BE ENTITLED IN THE ABSENCE OF THIS AGREEMENT. EMPLOYEE REPRESENTS THAT EMPLOYEE IS NOT RELYING ON ANY REPRESENTATION OR UNDERSTANDING NOT STATED IN THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Contract upon the terms and conditions above stated on the day and year first above written.

Executed this ____ day of _____, 2019.

Employee

City of Doral

By: _____
Edward A. Rojas

By: _____
Juan Carlos Bermudez
City of Doral, Mayor

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:

Luis Figueredo
City Attorney