


MEMORANDUM

DATE: JUNE 15, 2017

TO: GARY EUGENE, POLICE CHIEF

FROM: LARRY M. SPRING, JR., CITY MANAGER 

RE: ADMINISTRATIVE LEAVE

Issue:

You are being placed on paid administrative leave effective today, Thursday, June 15, 2017 at 8:00 a.m., concluding at 5:00 p.m. Thursday, July 6, 2017, during which leave you will be afforded the opportunity to determine whether to sign the Separation Agreement and General Release provided to you on today's date. While on administrative leave, you are directed not to report to work, not to attend any official city functions, and not to take any official actions on behalf of the City.

Explanation:

Subsequent to this administrative leave period, on Friday, July 7, 2017 at 8:00 a.m., your employment with the City shall terminate.

CC: Jeff P.H. Cazeau, City Attorney
Joseph Roglieri, Jr., Personnel Administration Director

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Agreement") is entered into by and between Gary Eugene ("EMPLOYEE") and the CITY OF NORTH MIAMI, FLORIDA, including but not limited to its current and former elected officials, employees, agents, administrators, representatives, successors and assigns (collectively, the "CITY").

WHEREAS, EMPLOYEE is employed by the CITY as the CITY's Police Chief; and

WHEREAS, EMPLOYEE resigned from his employment with the CITY effective _____; and

WHEREAS, the CITY has agreed to accept EMPLOYEE's resignation and will provide EMPLOYEE with six (6) weeks' severance pay in exchange for EMPLOYEE's execution of this Agreement.

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. **Resignation of Employee.** Effective _____ ("Resignation Date"), EMPLOYEE has resigned from his employment with the CITY.

2. **Full and General Waiver of All Rights and 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 from the beginning of the world until the date of execution 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 Workers 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 Budget 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.

Further, EMPLOYEE acknowledges and agrees that this release and waiver bars any claim or demand for damages, costs, fees, or other expenses, including attorneys' fees, incurred in connection with his employment with the CITY, his resignation 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. 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.

3. **No Pending Lawsuits, Claims or Charges and Covenant Not to Sue.**

EMPLOYEE represents that he has no charges or claims pending against the CITY with any federal, state, or local agency or department. EMPLOYEE also represents that he does not currently have pending before any court any dispute of any kind against the CITY. EMPLOYEE further 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. If it is determined that EMPLOYEE has any lawsuit, charge or claim of any kind pending against the CITY, EMPLOYEE agrees to dismiss all such charges, claims, and/or lawsuits with prejudice, immediately upon execution of this Agreement.

4. **Confidentiality and Non-Disparagement.** EMPLOYEE agrees that, to the maximum extent permitted by Florida Statute Section 215.425 and except as required by a lawful order of a court of competent jurisdiction, EMPLOYEE will not, at any time or in any manner whatsoever, either directly or indirectly, reveal, divulge, disclose, or communicate to any person, firm, or corporation the circumstances giving rise to EMPLOYEE's resignation of employment.

EMPLOYEE agrees that he will turn over all CITY keys, equipment, files, passwords, USBs, electronic data on any personal computer, records of the CITY in any format, documents and other materials in his possession. In addition, EMPLOYEE represents and agrees that he will not take any action which might embarrass or adversely affect the CITY. In particular, and by way of illustration and not limitation, EMPLOYEE agrees that he will not contact citizens of the CITY, the press or media or any entity that has a business relationship with the CITY and/or its elected officials in order to disparage the good reputation or police practices of the CITY and/or the CITY's elected officials or employees.

5. **Consideration.** In consideration for EMPLOYEE's waiver and release of all claims against the CITY and his compliance with all other obligations in this Agreement, the CITY agrees that, within ten (10) days of the Effective Date of this Agreement, it will provide EMPLOYEE with severance pay in an amount equal to six weeks of his regular base salary (i.e. \$ _____), from which all customary withholdings and deductions for tax and other purposes shall be made.

The parties agree and acknowledge that the payment delineated above is good, valuable and sufficient consideration for EMPLOYEE's full wavier and release of all claims, his fulfilling his specific obligations under paragraph 4 of this Agreement and his fulfilling all other promises as set forth herein. EMPLOYEE acknowledges that without this Agreement he would not otherwise be entitled to the consideration he is receiving pursuant to this Agreement.

6. **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 within 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.

7. **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 day revocation period is counted by calendar days. If the seventh day falls on a Saturday, Sunday or legal holiday, the seventh day will be the next business day.) Any revocation within this period must be in writing and must be received by Larry M. Spring, Jr., City Manager or, in his absence, by Jeff P.H. Cazeau, Esq., City Attorney, by 5:00 p.m. on the seventh (7) day following 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.

8. **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 day revocation period has expired, and if EMPLOYEE has not revoked this Agreement, the CITY will execute this Agreement.

9. **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.

10. **Action for Breach of Agreement.** In the event that any 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 Miami-Dade 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. **Governing Law and Severability.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If any provision 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 that Agreement.

12. **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.

13. **Encouragement to Consult Attorney.** The CITY hereby advises EMPLOYEE to consult with an attorney before signing this Agreement. EMPLOYEE acknowledges that he has, in fact, consulted with an attorney before signing this Agreement or that he knowingly decided against consulting with an attorney despite the CITY's encouragement to do so.

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

15. **Headings.** Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.

16. **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 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 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 MUTUAL NEGOTIATION AND 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 SETTLE 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.

GARY EUGENE

CITY OF NORTH MIAMI, FLORIDA

By: _____

By: _____
Larry M. Spring, Jr., City Manager

Date: _____

Date: _____

Approved as to Form and Legal Sufficiency:

By: _____
Jeff P.H. Cazeau, Esq., City Attorney