

IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO.:

DANIEL ROSEMOND,

Plaintiff,

v.

CITY OF HALLANDALE BEACH, FLORIDA,

Defendant.

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**COMPLAINT**

Plaintiff Daniel Rosemond sues Defendant City of Hallandale Beach, Florida, and alleges the following:

**PARTIES**

1. Mr. Rosemond is a resident of Miami-Dade County, Florida. From January 1, 2016, through December 28, 2016, Mr. Rosemond was the City Manager for the City of Hallandale Beach, Florida.

2. The City of Hallandale Beach, Florida (the "City"), is a local or municipal government entity that is located in Broward County, Florida.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to Fla. Stat. § 26.012. This is an action for damages in excess of \$15,000, exclusive of interest, costs, and attorneys' fees.

4. This Court has personal jurisdiction because the City is located in Florida.

5. Venue is proper in this Court under Fla. Stat. § 47.011 because the City is located in Broward County, Florida, because the causes of action sued upon accrued in

Broward County, Florida, and/or because the City is subject to personal jurisdiction.

6. All conditions precedent to bringing this action have been waived, excused, or otherwise have been performed or have occurred.

### **GENERAL ALLEGATIONS**

7. Mr. Rosemond became an employee of the City on February 13, 2013. At that time, Mr. Rosemond held the role of Deputy City Manager. Mr. Rosemond would remain in that role until December 31, 2015.

8. The City's Charter, at Section 3.07, expressly provides that the City Commission shall deal with city officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Given this requirement, the City Charter expressly provides that neither the City Commission nor its members shall give orders to any other officer or employee, either publicly or privately. Accordingly, while serving as Deputy City Manager, Mr. Rosemond was subject to the sole and exclusive direction and supervision of the City Manager.

9. While serving at Deputy City Manager, Mr. Rosemond performed well.

10. The City Manager did not issue Mr. Rosemond any disciplinary actions or negative performance reviews.

11. On October 5, 2015, the City Manager, Renee C. Miller, submitted her formal resignation, with the resignation becoming effective December 31, 2015.

12. Mr. Rosemond was subsequently offered the City Manager position, which he accepted.

13. On January 1, 2016, Mr. Rosemond officially became the City Manager.

14. Mr. Rosemond's employment as the City Manager was memorialized in a written employment agreement. A true and correct copy of the Employment Agreement

is attached as Exhibit 1.

15. On November 29, 2016, Vice Mayor Keith S. London led an effort to remove Mr. Rosemond as City Manager. Vice Mayor London gathered documents and alleged three reasons why he argued that Mr. Rosemond should be removed. These three stated reasons, and the documents Vice Mayor London put together were memorialized in a resolution dated December 1, 2016. With the resolution approved, Mr. Rosemond was suspended pending a final decision to terminate his employment.

16. As permitted under the City's Charter, on December 5, 2016, Mr. Rosemond submitted a written request for a public hearing to respond to the three alleged bases for his potential removal.

17. On December 28, 2016, a "public hearing" took place.

18. Following this public hearing, Mr. Rosemond's employment was terminated for cause.

19. The termination was memorialized in a resolution. A true and correct copy of the resolution is attached as Exhibit 2.

20. The termination of Mr. Rosemond's employment was retaliatory.

21. As detailed below, Mr. Rosemond acceded to requests by the City to participate in an investigation or other inquiry. Mr. Rosemond proceeded to disclose what he believed to be violations of the City's Charter and Florida's Sunshine Law. In addition, Mr. Rosemond also disclosed information on his own initiative in an internal complaint e-mailed to the City.

22. The termination of Mr. Rosemond's employment also was in breach of the employment agreement.

23. As detailed below, the City removed and terminated Mr. Rosemond based

on “malfeasance,” “misfeasance,” and “nonfeasance,” which are not bases with which to terminate the employment agreement “for cause.” Moreover, none of the stated reasons for removal and termination constitute “misconduct,” which is the applicable standard applied in the employment agreement. Further, the termination of the Employment Agreement was not “in accordance with Section 6.04 of the Charter of the City of Hallandale Beach,” which is incorporated into the employment agreement.

24. Mr. Rosemond has retained the undersigned law firm to represent him in the litigation and has agreed to pay the firm a reasonable fee for its services.

**COUNT I:**  
**VIOLATION OF FLORIDA’S WHISTLE-BLOWER’S ACT**

25. Plaintiff restates and realleges paragraphs 1 through 24 as if fully set forth herein.

26. The Legislature of the State of Florida has enacted a Whistle-blower’s Act. See Fla. Stat. § 112.3187.

27. The intent of the Whistle-blower’s Act is to prevent retaliatory action against employees and persons who, among other things, disclose information and participate in investigations.

28. Mr. Rosemond was an “employee,” as defined by the Whistle-blower’s Act, in that he performed services for, and under the control and direction of, or contracted with, an “agency.” Mr. Rosemond also would be a “person” under the Whistle-blower’s Act.

29. The City was and is an “agency,” as defined by Whistle-blower’s Act, in that it was and is, among other things, a local or municipal government entity.

30. While still serving as Deputy City Manager, the then City Attorney, V. Lynn

Whitfield, Esq., asserted allegations of hostile work environment and unlawful and unconstitutional discrimination, among other allegations. These allegations were made against Vice Mayor London (who at the time was not yet the Vice Mayor but was a Commissioner).

31. Mr. Rosemond engaged in protected activity under the Whistle-blower's Act.

32. This protected activity included acceding to requests to participate in the investigation or other inquiry being conducted by the City into Ms. Whitfield's allegations.

33. The disclosures made by Mr. Rosemond included specific information regarding a violation or suspected violation of a law, rule, or regulation or how certain acts or suspected acts otherwise would constitute gross mismanagement, malfeasance, misfeasance, or neglect of duty. These disclosures pertained to Vice Mayor London and how Vice Mayor London violated the City's Charter and Florida's Sunshine Law.

34. Mr. Rosemond engaged in other protected activity as well. This protected activity included, later, disclosing information on his own initiative in an internal complaint e-mailed to the City. This e-mail would constitute a written and signed complaint. (It appears no investigation whatsoever has been conducted because the City never contacted Mr. Rosemond to investigate these allegations.)

35. Mr. Rosemond did not commit or intentionally participate in committing the violations or suspected violations he disclosed.

36. Moreover, the disclosures made by Mr. Rosemond were not false. Indeed, with regard to the information disclosed during the investigation of Ms. Whitfield's allegations, the investigator stated the following:

Deputy City Manager Rosemond's allegations concerning

Commissioner London attempting to act as a conduit to other Commissioners are very serious. Assuming the conversations occurred as Mr. Rosemond described, and depending upon the precise words used, both the Charter provision prohibiting elected officials from directing staff personnel and Florida's stringent Sunshine Law provisions could be implicated. Conduct in violation of the City Charter or Florida law simply should not occur.

37. In response to Mr. Rosemond's disclosures, he was subject to adverse personnel actions, which included and were not limited to the following:

a. Pretextual reasons were created to support the basis for his suspension and then employment termination.

b. Documents and information addressing the three purported reasons for removal were withheld.

c. Documents and information addressing the three purported reasons for removal were withheld in part to leave questions unanswered. These "unanswered questions" were argued as further support for the stated reasons for removal.

d. Mr. Rosemond's employment was suspended.

e. Although suspended employees retain remote computer network access rights, Mr. Rosemond's remote access to the City's network was cut off.

f. Mr. Rosemond was ostracized and isolated as the City prohibited him from speaking with City employees, and City employees were forced to notify the City if Mr. Rosemond attempted to contact them.

g. Mr. Rosemond was embarrassed and humiliated and placed in a position so that he could not have a fair chance to defend himself based on other statements made in advance of the public hearing including Vice Mayor London implying that Mr. Rosemond's actions constituted corruption and stating words to the effect that Mr. Rosemond stole \$25,000 from the City.

h. Mr. Rosemond was denied due process with respect to the public hearing on his removal. Although the City Attorney represented that Mr. Rosemond would receive a quasi-judicial hearing in which he could present witnesses and cross-examine witnesses, this right subsequently was taken away.

i. Mr. Rosemond was not given documents responsive to his public records request—a request made nearly three weeks before the public hearing—so as to prepare for the public hearing.

j. Mr. Rosemond was precluded from meeting with witnesses to obtain information and otherwise prepare for the public hearing. The public hearing purposely was set on a date when it was known well in advance that Mr. Rosemond would not be present in the State of Florida.

k. Although all of the bases and documents supporting Mr. Rosemond's removal were supposed to be provided to him in advance of the public hearing (so he could then respond to those accusations at the public hearing), additional information was presented after the public hearing was closed and Mr. Rosemond was not offered an opportunity to respond to the new information.

l. Mr. Rosemond's employment was terminated.

m. In terminating Mr. Rosemond's employment, the City made comments through Vice Mayor London that it was "important" that the termination be "permanent record," with the implication being that it would result in prospective employers not hiring Mr. Rosemond.

n. Mr. Rosemond was not offered severance like what was done regarding a prior City Manager. Indeed, a prior City Manager was given severance, which included a substantial health insurance package.

38. There is some causal connection or relation between the events. The information Mr. Rosemond disclosed was about Vice Mayor London and Vice Mayor London was well aware of the information disclosed.

39. It was Vice Mayor London who initiated the efforts to suspend and then terminate Mr. Rosemond. This included, among other things, alleging the three stated bases for removal, putting together and choosing to omit documents pertaining to the removal, presenting the case for the removal, spearheading the process that would be used to conduct the public hearing, having new information submitted after the conclusion of the public hearing, and being the person to make the point of how important it was to make the termination part of the permanent record.

40. As a result, Mr. Rosemond suffered and continues to suffer damages.

41. All pre-suit requirements to bring this cause of action have been satisfied. For example, this cause of action has been raised within 180 days of the adverse personnel actions, including within 180 days of Mr. Rosemond's suspension and employment termination. Further, no administrative remedies are required to be exhausted before filing this action. In this regard, the City has failed to establish by ordinance an administrative procedure for handling complaints under the Whistle-blower Act, and the City has not contracted with the Division of Administrative Hearings under Fla. Stat. § 120.65 to conduct hearings alleging violations of the Whistle-blower Act. The lack of an ordinance and contract were confirmed by the City's Clerk in response to a public records act request. Where no such administrative remedy exists, as is the case here, the Whistle-blower Act permits an employee/person like Mr. Rosemond to bring a cause of action in court.

WHEREFORE, Mr. Rosemond respectfully requests that judgment be entered in



his favor and against the City:

- a. Awarding Mr. Rosemond lost wages, benefits, and other lost remuneration;
- b. Awarding Mr. Rosemond reasonable front pay;
- c. Awarding all pre-judgment and post-judgment interest;
- d. Awarding Mr. Rosemond reasonable costs, including attorneys' fees pursuant to Fla. Stat. § 112.3187(9)(d);
- e. Awarding permanent injunctive relief to remove the "with cause" termination and other offending papers from the "permanent record;" and
- f. Ordering such other and further relief as the circumstances and law require and/or provide.

**COUNT II:  
BREACH OF CONTRACT**

42. Mr. Rosemond restates and realleges paragraphs 1 through 24 as if fully set forth herein.

43. Mr. Rosemond and the City are parties to a written agreement. *See* Exhibit 1.

44. The City may terminate the Employment Agreement "subject only to the provisions set forth in Section 11 of the" Employment Agreement. Exhibit 1 at § 1.

45. Section 11 identifies the two exclusive ways for terminating the agreement: (a) "without cause," which would involve a payment of severance; or (2) "for cause," which would not involve a payment of severance.

46. For purposes of the Employment Agreement, "for cause" means "misconduct" as defined by Fla. Stat. § 443.036(29). Unless the termination is "for

cause,” the Employment Agreement is deemed to have been terminated “without cause.”

47. Here, through a resolution, the City terminated the Employment Agreement “with [sic] cause” based on three stated reasons. *See* Exhibit 2.

48. The City however breached the Employment Agreement.

49. Mr. Rosemond was neither removed nor terminated for misconduct under Fla. Stat. § 443.036(29). Rather, the City suspended and then terminated Mr. Rosemond based on “malfeasance,” “misfeasance,” or “nonfeasance.”

50. These three terms were articulated by Vice Mayor London. When presenting the case why Mr. Rosemond should be removed, Vice Mayor London started the presentation by addressing these three terms and what they allegedly meant with regard to the planned termination.

51. At no point while articulating the reasons for removal did Vice Mayor London explain that the basis for removal could only be “misconduct” as defined by Fla. Stat. § 443.036(29) or how any of the stated reasons constituted misconduct. In fact, Vice Mayor London did not even present the Employment Agreement. Notably, the Florida Statute defining misconduct does not contain the words malfeasance, misfeasance, or nonfeasance.

52. While the resolution terminating Mr. Rosemond’s employment references the statute, these words were added—after the fact—in violation of the City Charter.

53. In this regard, a draft resolution was prepared prior to the public hearing and attached to the agenda for the public hearing. The draft resolution did not include the words “without cause” or “for cause” or any reference to “misconduct.” After the public hearing was closed, a motion was made to add the words “with [sic] cause.” No motion was made to add any other language or changes to the resolution. But someone

unknown added an entirely new “whereas” clause and added words in Section 2 and Section 4 of the resolution referencing to “Florida Statute Section 443.036(29).” These additions were made in violation of the City Charter.

54. Additionally, none of the stated reasons constitute misconduct under Fla. Stat. § 443.036(29).

55. For example, one of the stated reasons for termination was the alleged improper use of a procurement card. The issue with the procurement card was raised in October 2015 (fourteen months before Mr. Rosemond’s termination). Mr. Rosemond’s then-supervisor, City Manager Renee C. Miller, who by City Charter is the person charged with deciding any disciplinary action, did not to issue any warning whatsoever. As such, the incident could not constitute misconduct.

56. Further, much of the conduct pertaining to the three stated reasons for termination did not take place or occur in the context of Mr. Rosemond being the City Manager, which is what the Employment Agreement governs. For example, the procurement card incident took place months before Mr. Rosemond became the City Manager and before the effective date of the Employment Agreement.

57. Likewise, two stated reasons involve the City’s Community Redevelopment Agency (“CRA”). Any actions involving the CRA would be those taken by the separate and distinct CRA Executive Director, not the City Manager. As such, these types of actions do not fall within the purview of the Employment Agreement, which only applies to the employment of the City Manager.

58. Finally, the termination of the Employment Agreement was not “in accordance with Section 6.04 of the Charter of the City of Hallandale Beach.” Exhibit 1 § 11.A.

59. Section 6.04 of the City Charter outlines the procedures for removing the City Manager. First, the City Commission shall adopt by affirmative vote of a majority of all its members a resolution that must state the reasons for the proposed removal. If that is done, then the City Commission may suspend the City Manager from duty for a period not to exceed forty-five days. Second, within five days after a copy of the resolution is delivered to the City Manager, the City Manager may file with the City Commission a written request for a public hearing. If that is done, then a public hearing shall be held at a City Commission meeting. Third, to the extent a public hearing is requested, as was done here, the City Commission may adopt a resolution of removal after the public hearing.

60. At several City Commission meetings, Vice Mayor London made a point of covering the procedures for removing the City Manager so that “everyone was on the same page.” Vice Mayor London did this by asking questions of the Interim City Attorney and Special Counsel. After hearing the answers to his questions, Vice Mayor London then stated, with regard to how the process worked, that “we [the City] lay out our case and they respond to that case.”

61. Mr. Rosemond’s removal was not completed in accordance with Section 6.04 of the City Charter, because of, but not limited to, the following:

a. After Vice Mayor London closed the public hearing, he proceeded to present new information to support the basis for terminating Mr. Rosemond. But under the City Charter, this information had to be presented before passing a resolution that stated the reasons for suspension and attached the supporting documents.

b. By presenting new information after the public hearing, no resolution was passed stating the additional reasons. This violated Mr. Rosemond

opportunity to request a public hearing on the new information.

c. Even if Vice Mayor London could present new information without having that new information memorialized in a resolution so that Mr. Rosemond could then request a public hearing to respond, the City at least had to offer Mr. Rosemond an opportunity to respond to the new information. But the City did not offer that opportunity. Rather, Vice Mayor London presented the new information and then proceeded to call for a motion to move forward with Mr. Rosemond's employment termination.

d. At least two City Commissioners (Michele Lazarow and Anabelle Taub) appear to be relying on other, unstated, reasons to remove Mr. Rosemond. These other reasons, which include, for example, not congratulating Commissioner Taub on winning her election, were not included among the three stated reasons adopted in either the resolution to suspend or the resolution to terminate Mr. Rosemond.

e. As stated above, the final resolution terminating Mr. Rosemond's employment contains language that was not included in the draft resolution as attached to the City Commission agenda for the public hearing and was not requested by motion to be included in the final resolution.

62. Mr. Rosemond has been damaged as a result of the City's breach of the Employment Agreement.

WHEREFORE, Mr. Rosemond respectfully requests that judgment be entered in his favor and against the City:

- a. Awarding Mr. Rosemond all damages;
- b. Awarding all pre-judgment and post-judgment interest;
- c. Awarding reasonable costs; and

d. Ordering such other and further relief as the circumstances and law require and/or provide.

**JURY DEMAND**

Mr. Rosemond demands a jury trial for all issues so triable.

Dated: January 25, 2017

Respectfully submitted,

s/Brian L. Lerner

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Attorneys for Plaintiff Daniel Rosemond

**CERTIFICATE OF SERVICE**

I certify that a copy hereof has been furnished to Defendant City of Hallandale Beach, Florida, c/o Mayor Joy F. Cooper (as designated agent for service of process), 400 S. Federal Highway, Hallandale Beach, Florida 33009, by service of process.

s/Brian L. Lerner

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# **EXHIBIT 1**

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), is by and between the City of Hallandale Beach, Florida, a Florida municipal corporation (hereinafter referred to as "City"), and Daniel A. Rosemond (hereinafter referred to by name or as "City Manager").

### WITNESSETH:

WHEREAS, the City desires to employ Daniel A. Rosemond as City Manager of the City of Hallandale Beach, Florida, as provided for in the City Charter of the City of Hallandale Beach; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, Daniel A. Rosemond desires to accept employment as City Manager of the City of Hallandale Beach under the terms and conditions set forth herein.

WHEREAS, the City hereby agrees to employ Daniel A. Rosemond as City Manager to perform the functions and duties specified in Article VI, Division 3 of the City Charter and by the City of Hallandale Beach Code of Ordinances, and to perform other legally permissible and proper duties and functions as the City Commission periodically assigns.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

#### **Section 1. Employment.**

A. The City of Hallandale Beach hereby hires and appoints Daniel A. Rosemond as its City Manager, under the terms established herein, to perform the duties and functions specified in the City Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City's employment of Daniel A. Rosemond as City Manager shall be effective January 1, 2016. The City Manager shall serve at the pleasure of the City Commission. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Commission to terminate the services of the City Manager at any time, subject only to the provisions set forth in Section 11 of this Agreement.

C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from the position of City Manager, subject only to the provisions set forth in Section 12 of this Agreement.



D. This agreement shall continue until either the City Commission terminates the agreement as specified in Section 11 or the City Manager terminates the agreement as specified in Section 12.

**Section 2. Salary and Evaluation.**

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Manager an annual base salary of \$176,000.00 payable in installments at the same time as other City employees are paid.

B. The City agrees to increase said base salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Commission may determine desirable on the basis of a performance evaluation of the City Manager. The first such evaluation shall take place seven months after appointment in August 2016 and then be conducted annually thereafter. It shall be in such form as the Commission deems appropriate.

C. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Manager.

**Section 3. Duties and Obligations.**

A. The City Manager shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City of Hallandale Beach. The City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner. The parties recognize that the position of City Manager is not and cannot be an hourly-type employment and the City Manager agrees to devote the amount of time and energy which is reasonably necessary to fully perform the duties required under this agreement. Thus, the City Manager shall work as required, in order to carry out his responsibilities.

B. The City Manager agrees to remain in the exclusive employment of the City. Nothing herein shall prevent the City Manager from occasional teaching or writing on employee's time off. However, the City Manager may also be permitted to do pro bono work with the approval of the City Commission.

C. In the event the City Manager is temporarily unable to perform his duties, he shall designate an Acting City Manager in accordance with the City Charter.

**Section 4. Automobile Allowance and Communications Equipment**

The City Manager is required to be on call for twenty-four hour service. In recognition thereof:

A. The City shall grant to the City Manager an automobile allowance of \$500.00 per month, and the City Manager shall purchase, maintain, and insure said vehicle. The City agrees

to reimburse the City Manager for mileage for travel outside of Broward and Miami-Dade Counties associated with business of the City at the same rate as other City employees are reimbursed.

B. The City shall provide the City Manager with an allowance of \$150.00 per month to compensate him for the use of his personal smart phone or other similar device for City Business.

#### **Section 5. Dues and Subscriptions**

The City agrees to pay the City Manager's professional dues for membership in the International City/County Management Association and Florida City/County Management Association. The City shall pay other dues and subscriptions on behalf of the City Manager as are approved in the City's annual budget or as authorized separately by the City Commission.

#### **Section 6. Professional Development**

The City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at the International City/County Management Association annual conference, Florida City/County Management Association Annual Conference, and the Florida League of Cities annual conference, within the budgeted amount. The City shall pay for the City Manager's attendance at other seminars, conferences, and committee meetings as approved in the City's annual budget or as approved by Commission action.

#### **Section 7. Vacation, Sick Leave, and Holidays**

City Manager shall be entitled yearly to Personal Time Off. The "PTO" account, consisting of forty (40) days a year in lieu of sick and vacation days, which at the end of each year shall not accrue into the next. PTO shall not accrue or be paid to employee upon separation of service; however such leave may be exhausted. Because of an existing balance of sick leave (100hours) accrued by the employee prior to the effective date of this agreement, said balance will be transferred to the employee's current 401(a) retirement plan upon the effective date of this agreement. City Manager shall also be entitled to all paid holidays, consistent with all other City employees.

#### **Section 8. Health, Dental, Vision and Life Insurance**

The City shall provide comprehensive medical, dental, and vision insurance for the City Manager and his dependents, and agrees to pay the full premium for such coverage. The City shall also provide the City Manager with an amount, not to exceed \$1,300 annually, to be used for the purpose of providing additional short-term disability, long-term disability, life insurance/ADD or other insurance coverage as of the effective date of this agreement.

## **Section 9. Retirement**

The City agrees to provide the City Manager with a 401(a) Deferred Compensation pension Plan with a 17% City contribution and a retirement health savings account at the same monthly contribution amount as other management level employees with both accounts eligible for immediate vesting. Additionally, because Mr. Rosemond is transitioning from a position as a regular management level employee to a contract employee, it is understood that there shall be no interruption in his vesting tenure within the 401(a) Deferred Compensation Plan.

## **Section 10. Job-Related Expenses**

The City recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses within the budgeted amount. The Chief Financial Officer is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. The City Manager shall report such expenditure quarterly to the City Commission.

## **Section 11. Termination by the City and Severance Pay**

A. The City Manager shall serve at the pleasure of the City Commission and the City Commission may terminate this Agreement and the City Manager's employment with the City at any time, by a majority vote of three Commissioners in accordance with the provision of Section 6.04 of the Charter of the City of Hallandale Beach.

B. Should a majority of the entire Commission (three members) vote to terminate the services of the City Manager "without cause," that is, the City Manager's services are no longer needed as determined in the discretion of the majority of the Commission, and unless terminated "for cause" under paragraph C below, then within ten (10) business days following such vote, the Commission shall cause the City Manager to be paid any accrued unpaid salary and benefits earned (but excluding such items and allowances as are used in conducting City business such as, but not limited to, the use of the City computer and the automobile and cell phone allowance) prior to the date of termination based on City Manager's current rate of pay and a forty (40) hour work week. Within fifteen (15) calendar days following the vote to terminate the City Manager's employment, the Commission shall cause the City Manager to be paid a lump sum severance pay equal to twenty (20) weeks of his base salary as full and complete payment and satisfaction of any claims of the City Manager of whatsoever nature arising out of this Agreement or otherwise. The City shall continue to provide and pay for medical coverage for the City Manager for the nine (9) months following the date of such termination, in the same manner as the City Manager is receiving at the time of termination, and after that, the City Manager shall have the right to COBRA coverage in accordance with applicable regulations. As consideration for such payment, the City Manager shall, prior to receipt thereof, execute and deliver to the City a general release of the City and its Commission members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by an attorney of the City Commissions choosing.

C. In the event the City Manager is terminated for misconduct as defined in Section

443.036 (29), Florida Statutes, the City shall have no obligation to pay any severance and is prohibited from paying severance pursuant to Section 215.425 (4)(a)(2), Florida Statutes. As used in this agreement, the term "severance pay" does not include earned and accrued annual, sick, compensatory, administrative leave or personal time off.

D. In the event the Commission, at any time during the employment term, reduces the salary or other benefits of the City Manager, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time City employees, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefiting the City Manager, or the City Manager resigns following a suggestion whether formal or informal, by the City that he resign, then, in that event, the City Manager may, at his option, be deemed to be "terminated" within the meaning and context of the severance pay provision in Section 11, paragraph B of this Agreement. The City Manager shall notify the Commission in writing of the alleged violation. The Commission shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the City Manager may at his option, consider such violation as termination "without cause" as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual base salary and benefit level in effect prior to the reduction or refusal.

#### **Section 12. Termination by the City Manager**

The City Manager may terminate this Agreement at any time by delivering to the City Commission a written notice of termination not later than sixty (60) days prior to the effective date of the termination, unless waived by the City Commission. If the City Manager terminates this Agreement, then the provisions of Section 11, Paragraph B above, shall not apply. If the City Manager voluntarily resigns pursuant to this Section, the City shall pay to the City Manager all accrued compensation due the City Manager up to the City Manager's final day of employment, including any benefits earned. The City shall have no further financial obligation to the City Manager pursuant to this Agreement. This subsection shall not prevent the City Manager from collecting any money accrued and earned as a result of participation in the City's retirement programs.

#### **Section 13. Disability**

If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of, including but not limited to, sickness, accident, injury, mental incapacity or health for a period of four consecutive weeks beyond his personal time off balance, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 11, Paragraph B of this Agreement.

#### **Section 14. Other Customary Benefits**

The City shall afford the Employee the right to participate in any other benefits, not provided herein, or working conditions as provided for the Professional Management Employees of the City.

## **Section 15 Indemnification.**

A. City shall defend, save harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Manager reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Manager committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the City Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

## **Section 16. Bonding**

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance or law.

## **Section 17. Code of Ethics**

In as much as the City Manager is an active, Full Member of the International City/County Management Association (ICMA), the "Code of Ethics" promulgated by ICMA is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to govern the City Manager's conduct and actions as City Manager of the City.

## **Section 18. Attorney's Fees**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, in addition to such other relief as may be granted, each party shall bear their own attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

## **Section 19. General Terms and Conditions**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of the City Manager.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Broward County, Florida.

F. Upon City Manager's death, the City's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
2. Payment of all outstanding hospitalization, medical and dental bills in accordance with City's insurance policies or plans; and
3. Payment of all life insurance benefits in accordance with the City's insurance policies or plans.

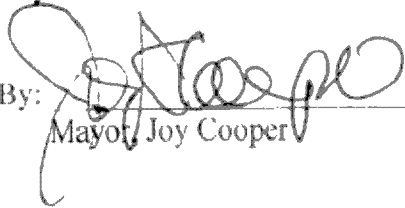
G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be January 1, 2016,

Executed by the City, this 2nd day of November, 2015.

City of Hallandale Beach,

By:   
Mayor, Joy Cooper

Approved as to Form and Legal Sufficiency  
For the City Only:

Attest:

  
City Clerk, Mario Bataille

By:   
City Attorney, V. Lynn Whitfield

Executed by City the City Manager, this 2nd day of November, 2016

Witnesses:

Dimitris Perron  
Print Name

Daniel A. Rosemond  
Daniel A. Rosemond, City Manager

[Signature]  
Signature

**VOTE  
AYE/NAY**

Michelle Mack  
Print Name  
[Signature]  
Signature

Mayor Cooper	<u>✓</u>
Vice-Mayor Julian	<u>✓</u>
Commissioner Lazarow	<u>✓</u>
Commissioner London	<u>✓</u>
Commissioner Sanders	<u>✓</u>

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## **EXHIBIT 2**



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**RESOLUTION NO. 2016 -197**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA TAKING THE SECOND STEP TO PERMANENTLY REMOVE DANIEL ROSEMOND FROM THE POSITION OF CITY MANAGER AND TERMINATING HIS CITY EMPLOYMENT AGREEMENT WITH CAUSE IN ACCORDANCE WITH SECTION 11 THEREOF AND FLORIDA STATUTE SECTION 443.036 (29) INCORPORATED THEREIN; PROVIDING AN EFFECTIVE DATE.**

14       **WHEREAS,** Daniel Rosemond currently serves as the City's City Manager pursuant to  
15 an Employment Agreement between the City and Mr. Rosemond, executed on November 2, 2015  
16 with an effective date of January 1, 2016; and

17       **WHEREAS,** the City Commission desires to take the second step to permanently  
18 remove Daniel Rosemond from the position of City Manager and to terminate Mr. Rosemond's  
19 City employment for the reasons stated in attached Exhibit "A" which is incorporated herein by  
20 reference; and

21  
22       **WHEREAS,** on December 1, 2016, pursuant to Section 6.04(1) of the City Charter the City  
23 Commission adopted by affirmative vote of a majority of the commission Resolution 2016-185 for  
24 the proposed removal and suspension of Daniel Rosemond; and

25  
26       **WHEREAS,** on December 1, 2016, pursuant to Section 6.04(2) of the City Charter a copy  
27 of Resolution 2016-185 was personally delivered to Daniel Rosemond through Mr. Rosemond's  
28 Attorney Freddy Perera; and

29  
30       **WHEREAS,** pursuant to Section 6.04(2) of the City Charter, the City Manager may file  
31 with the City Clerk on behalf of the City Commission a written request for a public hearing. The

32 public hearing must be held not earlier than fifteen (15) days nor later than thirty (30) days after  
33 the City Manager's request is filed; and

34  
35 **WHEREAS**, pursuant to Section 6.04(2) of the City Charter, if the City Manager requests  
36 a public hearing he may file with the City Clerk on behalf of the City Commission a written reply  
37 no later than five (5) days before the public hearing; and

38  
39 **WHEREAS**, on December 5, 2016, pursuant to Section 6.04(2) of the City Charter, Daniel  
40 Rosemond filed a request for a public hearing and this public hearing was duly held on December  
41 28, 2016 at approximately 6:00 p.m.; and

42  
43 **WHEREAS**, Section 6.04(3) of the City Charter the City Commission may immediately  
44 adopt a resolution of removal of Daniel Rosemond following his public hearing; and

45  
46 **WHEREAS**, following the public hearing the City Commission resolves to remove Daniel  
47 Rosemond as City Manager and to terminate his employment agreement with cause in  
48 accordance with Section 11 of his City Employment Agreement, and Florida Statute Section  
49 443.036 (29) incorporated therein;

50  
51 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF**  
52 **HALLANDALE BEACH, FLORIDA AS FOLLOWS:**

53  
54 **Section 1. Recitals.** The above recitals are incorporated herein by this reference.

55  
56 **Section 2. Second Step to Permanently Remove and Terminate Mr. Daniel**  
57 **Rosemond.** The City Commission hereby elects to take the second step to permanently  
58 remove Mr. Rosemond from the position of City Manager and to terminate Mr. Rosemond's City

59 employment for the stated reasons in Exhibit "A" with cause in accordance with Section 11 of his  
60 City Employment Agreement, and Florida Statute Section 443.036 (29) incorporated therein.

61  
62 **Section 3. Final Action.** The City Commission hereby makes a final decision by this  
63 Resolution concerning Mr. Rosemond's employment status and accordingly permanently  
64 removes and terminates Mr. Rosemond's employment with the City as City Manager.

65  
66 **Section 4. Terminated.** The employment contract executed November 2, 2015,  
67 with an effective date of January 1, 2016 is hereby terminated with cause in accordance with  
68 Section 11 of his City Employment Agreement, and Florida Statute Section 443.036 (29)  
69 incorporated therein.

70  
71 **Section 5. Effective Date.** This resolution shall take effect immediately upon  
72 adoption.

73 APPROVED AND ADOPTED this 28<sup>th</sup> day of December, 2016.

74  
75 *Kathleen Smith*  
76 \_\_\_\_\_  
77 JOY F. COOPER  
78 MAYOR

79  
80 SPONSORED BY: CITY COMMISSION

81  
82 ATTEST:

83  
84 *Mario Bataille*  
85 \_\_\_\_\_  
86 MARIO BATAILLE, CMC  
87 CITY CLERK

88  
89 APPROVED AS TO LEGAL SUFFICIENCY  
90 FORM

91  
92 *Andre McKenney*  
93 \_\_\_\_\_  
94 ANDRE MCKENNEY, INTERIM CITY ATTORNEY

VOTE	
AYE/NAY	
Mayor Cooper	<u>  </u> / <u>  </u> ✓
Vice Mayor London	✓ / <u>  </u>
Comm. Lazarow	✓ / <u>  </u>
Comm. Sanders	<u>  </u> / ✓
Comm. Taub	✓ / <u>  </u>

EXHIBIT "A"

STATED REASONS FOR TERMINATION

95  
96  
97  
98  
99

- 100 1. City Manager used his City/CRA issued P-Card for personal purchases including  
101 the purchase of an airline ticket for Nicholle Rosemond.  
102
- 103 2. On July 20, 2016, the City Manager executed a Direct Hire Placement Agreement  
104 with Segrera Associates, Inc. without City Commission approval, which Direct Hire  
105 Placement Agreement was for an indefinite term and was for recruitment services  
106 to fill any positions as requested by the City Manager; accordingly the payments  
107 under the Direct Hire Placement Agreement can exceed the City Manager's  
108 spending authority and the City Commission should have approved the Direct Hire  
109 Placement Agreement. The City Manager authorized Invoice #3330 to Segrera  
110 Associates, Inc. for a total of \$25,000, which amount is not in accordance with the  
111 terms of the Direct Hire Placement Agreement based upon the salaries of the  
112 recruited persons (Celeste Lucia and Nickens Remy); total fee should have been  
113 approximately \$42,253.12, not \$25,000.  
114
- 115 3. With respect to an unsolicited proposal submitted by IMC Equites for the Foster  
116 Dixie site, the City Manager accepted a personal check from Carlos Segrera, not  
117 a check from the proposer, IMC Equities. The City Manager authorized Gray  
118 Robinson, P.A. and NK Ventures to work on the IMC Equities proposal prior to  
119 receiving a check form IMC Equites or the Carlos Segrera check being deposited.  
120 City Manager did not deposit the Carlos Segrera check in a timely manner (held  
121 the check for approximately 10 weeks while depositing two others checks from  
122 other proposers in less than 2 weeks). City Manager approved refunding \$25,000  
123 to Carlos Segrera pursuant to Check #19031 without deducting \$2,150 without  
124 deducting fees already incurred by the CRA and City (Gray Robinson, P.A. and N-  
125 K Ventures).

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127  
128  
129  
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