

MARGATE SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (hereinafter referred to as "Agreement") is executed by and between JANETTE SMITH (hereinafter referred to as "MS. SMITH") and the CITY OF MARGATE, FLORIDA, a municipal corporation (hereinafter referred to as "CITY") both agree to be bound and understand as follows,

WITNESSETH:

WHEREAS, MS. SMITH presently is employed as the City Attorney and City Prosecutor for the CITY, pursuant to that Employment Agreement dated June 19, 2019;

WHEREAS, it is mutually agreeable by MS. SMITH and the CITY, that MS. SMITH and CITY agrees to resign her position as City Attorney with the CITY and waives any right or a claim to reinstatement or reemployment with the CITY in the future, including directly through a temporary employment agency, or in a contractor or subcontractor capacity;

WHEREAS, it is the desire of MS. SMITH and the CITY to resolve any and all matters in controversy, disputes, and causes of action that MS. SMITH may have against the CITY in an amicable fashion, and have reached a full and final compromise and settlement agreement of all matters, causes of action, claims and contentions that MS. SMITH or CITY may have or could have against either party; and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, MS. SMITH and the CITY, hereby agree to be legally bound by the following terms and conditions which constitute full settlement of any and all disputes between them including but not limited to MS. SMITH's agreement to resign from her position as City Attorney and City Prosecutor with the CITY:

1. **Recitals.** All of the foregoing recitals are true and correct and are incorporated herein by reference.

2. **Approval.** The Parties acknowledge and agree that this Separation Agreement and General Release is contingent upon the approval by the City Commission of the City of Margate during the July 9, 2021, Special Meeting. In the event that the City Commission of the City of Margate does not approve this Separation Agreement and General Release, this Agreement shall be considered null and void and not be enforceable in any respect.

3. **Cessation of Benefits.** MS. SMITH's last day of employment with the CITY will be July 9, 2021 ("Separation Date"), and unless otherwise stated in this Agreement, MS. SMITH will cease to accrue any benefits as a result of her employment with the CITY as of July 9, 2021, including but not limited to, employer contributions to pension programs, or any other employee benefit program or individual coverage in accordance with the terms of the applicable policy, plan or program. MS. SMITH will continue all of her vested rights in all retirement benefits and funds, if any, although the Parties agree that the CITY's contributions on MS. SMITH's behalf cease on July 9, 2021, except as provided for in this Agreement.

4. **Return of Property.** MS. SMITH agrees to return to the CITY all the CITY Property in her possession or control. For the purposes of this Agreement, "CITY Property" means documents (and all copies thereof) and other CITY Property that MS. SMITH has in her possession at any time, including, but not limited to, CITY files, notes, agreements, memoranda, drawings, records, business plans and forecast, financial information, specifications, computer-recorded information, tangible property (including, but not limited to, keys, identification badges, laptop computers, other mobile electronic devices, and electronic storage devices), credit cards, entry cards; and any materials of any kind that contain or embody any proprietary or confidential information of the CITY (and all reproductions thereof). MS. SMITH's timely return of all such CITY Property is a condition precedent to MS. SMITH's receipt of the severance benefits under this Agreement.

5. **Settlement Amount.** Within twenty (20) calendar days of the Effective Date of this Agreement, which will be the date this Agreement is signed by MS. SMITH, and is approved by the City of Margate Commission and signed on behalf of the CITY, the CITY will pay MS. SMITH as follows:

Check 1: Payment of regular salary, pursuant to the Employment Agreement through Separation Date of July 9, 2021; and

Check 2: Payment of accrued leave benefits, less applicable withholding, as defined by Section 8 of Employment Agreement providing for cash out of 100% of all accumulated types of leave at the current rate of pay in a single installment accrued through July 9, 2021; and

Check 3: Severance Payment in the amount of (10) ten weeks gross compensation, less applicable withholding.

Furthermore, CITY shall continue to provide MS. SMITH with current CITY health insurance through August 31, 2021.

The Parties further agree that the Settlement amount specified above shall constitute full and complete payment for any and all damages of whatever kind and nature which MS. SMITH has, claims to have or may in the future claim to have against the CITY. MS. SMITH agrees to indemnify, defend and hold the CITY harmless from any tax liability, including interest or penalties, in the event there are any claims raised by the IRS relating to the aforementioned payment, and shall also indemnify and hold harmless the CITY as to any attorneys' fees, expenses, or liens for such amount.

6. **Mutual General Release.** In consideration for the promises contained in this Agreement, and the settlement proceeds to be paid to MS. SMITH by the CITY, the parties, MS. SMITH and the CITY intend to effectuate the complete extinguishment of any and all claims, known or unknown, that MS. SMITH and CITY may have against one another, including its current and former city commissioners, directors, officers, employees, attorneys, representatives and agencies, both in their representative and individual capacities, up to and including the Effective Date of this Agreement. Accordingly, MS. SMITH and CITY hereby unconditionally, fully and finally releases and forever discharges MS. SMITH and CITY, as well as its current and former commissioners, directors, officers, employees, attorneys, and agencies both in their representative and individual capacities, from any and all duties, claims, rights, complaints, charges, damages, costs, expenses, attorneys' fees, debts, demands, actions, obligations, liabilities, and causes of action, of any and every kind, nature, and character whatsoever, whether known or unknown, whether arising out of contract, tort, statute, settlement, equity or otherwise, whether foreseen or unforeseen, whether past or present, whether fixed, liquidated, or contingent, which MS. SMITH and CITY has, had, or may in the future claim to have based on any act or omission concerning any matter, cause, or thing arising prior to the date of this Agreement and up to the Effective Date of this Agreement (all of the foregoing are hereinafter referred to collectively as the "Released Claims").

The Released Claims include, but are not limited to, those directly or indirectly arising out of, or in any way pertaining to, MS. SMITH's employment with the CITY and /or resignation thereof, including but not limited to:

- a. any claims of breach of her express and/or implied employment contract, employment fraud, and any other common law causes of action related to MS. SMITH's employment with the CITY, whether arising in contract or tort, including any intentional torts, or any claim based upon or related to any instrument, agreement, or document entered into by or between the Parties
- b. except as protected by local, state, and federal laws, any claims under local, state, or federal law for discrimination, wrongful termination, harassment, and/or retaliation related to MS. SMITH's employment (including workers'

compensation retaliation or any other retaliation or whistle-blower's claim); and

- c. any claims for violation of any federal, state, or local statute, rule, regulation, or ordinance pertaining to employment, wages, compensation, hours worked, or any other aspect of MS. SMITH's actual or prospective relationship with and/or termination from the CITY.

In short, this Release by MS. SMITH and CITY is intended to cover any and all claims that MS. SMITH and CITY ever had, now has, or hereafter can, shall, or may have against either party including the CITY'S current, and former commissioners, directors, officers, employees, attorneys, representatives, and agencies, both in their representative and individual capacities, that are known, unknown, foreseen, or unforeseen, from the beginning of the world up through the Effective Date of this Agreement with no "carve outs" or exceptions to the maximum extent allowed by law.

7. **Non-Admission Clause.** By entering into this Agreement, neither MS. SMITH nor the CITY admit any liability whatsoever. This Agreement does not constitute an admission by MS. SMITH or the CITY of any violation of any federal, state, or local statute or regulation, or any violation of the Parties' rights, or of any alleged duty owed by the Parties to one another.

8. **Non Re-employment.** MS. SMITH waives any right or claim to reinstatement or re-employment with the CITY in the future, including directly, through a temporary employment agency, or in a contractor or subcontractor capacity. This is a negotiated, non-retaliatory settlement term.

9. **Representations and Warranties.**

- a. By entering into this Agreement, MS. SMITH and CITY understands that this Agreement precludes either party from recovering any relief as a result of any charge, lawsuit or proceeding brought by either party. This Agreement is not to be construed as interfering with or limiting either Party's ability to communicate with any government agencies and/or their contractors, agents, or persons or entities acting on their behalf, or otherwise participate in any investigation or proceeding that may be conducted by any government agency, and/or its contractors, agents, or persons or entities acting on its behalf, including testifying or providing documents or other information, without notice to the other party.
- b. MS. SMITH represents and warrants that she has been correctly paid and/or has received all leave (paid or unpaid), compensation, wages,

bonuses, commissions, and/or benefits to which she may have been entitled to and no other leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits are due except as provided in this Agreement.

10. **Enforcement.** In connection with any litigation or other proceeding arising out of or relating to this Agreement, including any action to enforce the terms of this Agreement, MS. SMITH and the CITY agree the prevailing party shall be entitled to all attorneys' fees and costs associated with such proceeding, up through and including any appeal or post-judgment proceeding. The CITY's liability for costs and reasonable attorney's fees, however, shall not alter or waive the CITY's sovereign immunity, or extend the CITY's liability beyond the limits established in section 768.28, Florida Statutes, as amended. The proper and only venue for any action, based upon any alleged breach of any term, provision or obligation of this Agreement, shall be in the Broward County Circuit Court for the State of Florida.

11. **Interpretation.** This Agreement has been negotiated by and between the Parties and shall not be construed against the "drafter" of the Agreement. The language of all parts of this Agreement shall be construed in accordance with its fair meaning and not strictly for or against any of the Parties. If any provision of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. Whenever possible, each provision of this document shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this document is held to be invalid, illegal, or unenforceable in any jurisdiction (and it is not capable of modification as described above), it shall be severed and such invalidity, illegality, or unenforceability shall not affect the enforceability of the provision in any other jurisdiction, nor shall it affect the enforceability of any other provision of this document.

12. **Final Agreement.** MS. SMITH and the CITY agree that this Agreement constitutes their final and complete Agreement with respect to MS. SMITH's employment as City Attorney with the City of Margate and her resignation from her position as City Attorney, and this Agreement supersedes that Employment Agreement entered into by MS. SMITH and the CITY on June 19, 2019. That Employment Agreement entered into by MS. SMITH and the CITY on June 19, 2019, is null and void as of the effective date of this Agreement except that Section 13 of the Employment Agreement (Indemnification) shall survive the termination of that Employment Agreement and shall continue in force according to the terms set forth in Section 13 of the Employment Agreement dated June 19, 2019. The parties hereby further agree that this Agreement cannot be modified except by written instrument executed by MS. SMITH and the CITY. The Parties represent and acknowledge that in executing this Agreement, neither Party has relied upon any representation or statement made by the other with regard to the subject matter, basis or

effect of this Agreement, other than the promises and representations made specifically in this Agreement.

13. **Voluntariness.** By this provision, MS. SMITH and the CITY agree that they have fully read, negotiated, and completely understand the provisions of this Agreement, that the Parties have been advised to consult with an attorney before signing this Agreement, and that the Parties are signing freely and voluntarily, and without duress, coercion, or undue influence. There is nothing that prohibits either Party from entering this Agreement contingent upon City Commission approval as set forth in Paragraph 2.

14. **Successors and Assigns.** This Agreement shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of each Party and to their respective heirs, administrators, representatives, executors, successors and assigns.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one single Agreement. Faxed transmissions, emails and/or copies of the signature block shall be deemed enforceable.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

IN WITNESS THEREOF, MS. SMITH and the CITY have executed this SEPARATION AGREEMENT AND GENERAL RELEASE and hereby execute the same with full knowledge and understanding of its terms.

By: _____
JANETTE M. SMITH, ESQ.

Dated this ____ day of July, 2021.

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2021.

NOTARY PUBLIC NOTARY PUBLIC/
State of Florida

Personally Known _____ or Produced Identification _____
Type of Identification Produced Type of Identification Produced: _____

My Commission Expires:
[INSERT STAMP]

By: _____
ARLENE R. SCHWARTZ
Mayor, City of Margate

Dated this ____ day of July, 2021.

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2021.

NOTARY PUBLIC NOTARY PUBLIC/
State of Florida

Personally Known _____ or Produced Identification _____
Type of Identification Produced Type of Identification Produced: _____

My Commission Expires:
[INSERT STAMP]

By: _____ Dated this ____ day of July, 2021.

CALE CURTIS
City Manager, City of Margate

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2021.

NOTARY PUBLIC NOTARY PUBLIC/
State of Florida

Personally Known _____ or Produced Identification _____
Type of Identification Produced Type of Identification Produced: _____

My Commission Expires:
[INSERT STAMP]

By: _____ Dated this ____ day of July, 2021.

JOSEPH J. KAVANAGH
City Clerk, City of Margate

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2021.

NOTARY PUBLIC NOTARY PUBLIC/
State of Florida

Personally Known _____ or Produced Identification _____
Type of Identification Produced Type of Identification Produced: _____

My Commission Expires:
[INSERT STAMP]