

To: The Honorable Mayor and City Council

From: Roland Galdos, Interim City Attorney

Date: October 13, 2015

RE: CITY MANAGER ALEEM A. GHANY
EMPLOYMENT SEPARATION AND GENERAL RELEASE AGREEMENT

RECOMMENDATION

That the Mayor and City Council find that the Separation Agreement is reasonable, fair and equitable, and therefore desire to execute the Separation Agreement with the City Manager.

BACKGROUND

On September 17, 2015, the City Manager tendered a letter to the Mayor and City Council announcing his resignation from his appointment, effective October 16, 2015.

On September 21, 2015, the Mayor and City Council authorized negotiations with the City Manager to establish the terms and conditions of an Employment Separation and General Release Agreement between the City and City Manager.

ATTACHMENT(s)

Resolution
Employment Separation and General Release Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF AN EMPLOYMENT SEPARATION AND GENERAL RELEASE AGREEMENT WITH THE CITY MANAGER, IN SUBSTANTIALLY THE ATTACHED FORM; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on May 27, 2014, the Mayor and Council of the City of North Miami (“City”), appointed Aleem A. Ghany, PE, as the City Manager for the City of North Miami (“City Manager”); and

WHEREAS, on July 22, 2014, an Employment Contract between the City and City Manager was executed, memorializing the terms and conditions of the appointment of the City Manager; and

WHEREAS, on September 17, 2015, the City Manager tendered a letter to the Mayor and City Council announcing his resignation from his appointment, effective October 16, 2015; and

WHEREAS, on September 21, 2015, the Mayor and City Council authorized negotiations with the City Manager to establish the terms and conditions of an Employment Separation and General Release Agreement (“Separation Agreement”) between the City and City Manager; and

WHEREAS, the Mayor and City Council find that the Separation Agreement, is reasonable, fair and equitable, and therefore desire to execute the Separation Agreement with the City Manager, in substantially the attached form.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authorization to Approve Employment Separation and General Release Agreement. The Mayor and City Council of the City of North Miami, Florida, hereby approve the execution of an Employment Separation and General Release Agreement with the City Manager, attached hereto as Exhibit “A”.

Section 2. Authorization of City Attorney. The City Attorney is hereby authorized to do all things necessary to effectuate the terms of the Employment Separation and General Release Agreement.

Section 3. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this ____ day of _____, 2015.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

ROLAND C. GALDOS, ESQ.
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.
Vice Mayor Carol Keys, Esq.
Councilman Scott Galvin
Councilman Philippe Bien-Aime
Councilman Alix Desulme

_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)
_____ (Yes) _____ (No)

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Agreement") is entered into by and between the City of North Miami, a Florida Municipal Corporation, including its related entities and subdivisions, as well as its respective current and former council members, employees, attorneys, agent, representatives, and officials (all in their official and individual capacities), as well as their heirs, executors, administrators, predecessors, successors, and assigns (collectively referred to herein as the "CITY") and Aleem A. Ghany ("GHANY") (the CITY and GHANY are jointly referred to herein as, the "Parties").

WHEREAS, GHANY is employed by the CITY as City Manager pursuant to an Employment Agreement dated July 22, 2014 (the "Employment Agreement");

WHEREAS, by letter dated September 17, 2015, GHANY advised the CITY that he wished to resign from his employment with the CITY as City Manager, effective October 16, 2015;

WHEREAS, the CITY has agreed to accept GHANY's resignation from employment as City Manager, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the CITY and GHANY agree as follows:

1. **Recitals.** The Recitals above are incorporated herein.
2. **Last Day of Employment.** The Parties agree and understand that, upon approval of the City Council, GHANY'S last day of employment as City Manager shall be October 16, 2015.
3. **Leave Payment.** The Parties acknowledge that, pursuant to Paragraph 11 of the Employment Agreement, GHANY is entitled to receive a payment for all accrued unused annual and sick leave (consisting of 979.29 hours of sick leave and 1625.18 hours of annual leave, for a total of 2,604.00 accrued unused hours of leave as of October 16, 2015) upon resignation ("Leave

Payment”). The Leave Payment will be made in the following two installments: (i) a payment for 700 hours of GHANY’s accrued unused sick leave will be made to GHANY within twenty (20) calendar days of the Effective Date of this Agreement; and (ii) a payment for the balance of GHANY’s accrued unused sick leave and annual leave will be made to GHANY between January 1 and 30, 2016. The Parties agree and understand that all applicable withholdings and appropriate payroll deductions will be made from these payments and that these payments do not constitute “Compensation” for the purpose of calculating GHANY’s retirement benefit under Section 15-90 of the City Code.

4. **Employment Agreement.** The Employment Agreement will become null and void as of the Effective Date of this Agreement, except for paragraph 14 – Indemnification, which shall survive the termination of the Employment Agreement.

5. **Full and General Waiver of All Rights and Claims.** In exchange for the consideration provided in this Agreement, GHANY hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of action, 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:

The Employment Agreement, CITY Charter, Code, Civil Service Rules and/or any other applicable CITY policy or practice; Title VII of the Civil Rights Act of 1964; 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; or Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance.

GHANY also 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 GHANY's employment with the CITY, his separation from that employment, or with any of the above-referenced claims. GHANY understands and agrees that the claims to which GHANY is waiving by entering into this Agreement includes a waiver of the right to recover money or other relief in any action he might institute, and also GHANY's waiver of any right to recover money or any other relief whatsoever in any action that might be brought on GHANY's 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. GHANY 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 GHANY's intention to fully, finally and forever resolve and release any and all disputes GHANY 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.

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

GHANY represents that he does not have any charges or claims pending against the CITY with any federal, state, or local agency or department and does not have pending before any court any

dispute of any kind against the CITY. GHANY 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 GHANY has any lawsuit, charge or claim of any kind pending against the CITY, he agrees to dismiss all such charges, claims and/or lawsuits with prejudice, immediately upon the effective date of this Agreement.

7. **Consideration.** In consideration of GHANY's waiver and release of all claims against the CITY and the other consideration provided to it under this Agreement, the CITY agrees to provide GHANY with a lump sum severance payment equal to twelve (12) weeks of GHANY's regular base salary (less any applicable withholdings and appropriate payroll deductions). Such payment shall be made to GHANY within twenty (20) calendar days of the Effective Date of this Agreement. The Parties agree and understand that all applicable withholdings and appropriate payroll deductions will be made from this payment and that this payment does not constitute "Compensation" for the purpose of calculating GHANY's retirement benefit under Section 15-90 of the City Code.

8. **Adequacy of Consideration.** The CITY and GHANY agree and acknowledge that the consideration set forth in this Agreement constitutes good, valuable and sufficient consideration for GHANY's full waver and release of all claims against the CITY.

9. **Time to Consider Signing Agreement.** GHANY acknowledges that he has been given a reasonable period of not less than twenty-one (21) calendar days within which to decide whether to sign this Agreement. GHANY 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. GHANY understand and agrees that he can use all or part of the twenty-one (21) day period to decide whether to sign this Agreement. GHANY further acknowledges that he has, in fact, taken a reasonable period of time to consider this Agreement.

10. **Seven (7) Day Period to Revoke.** GHANY 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 delivered to Interim City Attorney Roland Galdos, Esq., by 5:00 p.m. on the seventh (7) day following GHANY's execution of the Agreement. GHANY understands and agrees that this Agreement will become null and void in the event that GHANY revokes this Agreement.

11. **Effective Date.** This Agreement will become effective when each of the following conditions is met: 1) GHANY executes the Agreement; 2) the seven (7) day revocation period set forth in paragraph 12 above expires; and 3) the City Council publicly approves this Agreement. When the Agreement becomes effective, the CITY will execute it. In the event that the City Council does not publicly approve the Agreement, the Agreement is null and void.

12: **Governing Law and Severability.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of any litigation between the Parties which in any way arises out of this Agreement. 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.

13. **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. GHANY acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with GHANY's decision to sign this Agreement except for those set forth in this Agreement.

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 provision of this Agreement.

16. **Acknowledgment.** GHANY acknowledges that he has carefully read and understands this Agreement consisting of seven (7) pages and agrees that the CITY has not made any representations other than those contained herein. GHANY 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. GHANY acknowledges that he was advised to consult with an attorney before signing this Agreement and that he has either consulted with an attorney or has decided not to consult with an attorney.

THE PARTIES HAVE READ UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO THE AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE CITY AND ALEEM A. GHANY. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THE BENEFITS SET FORTH ABOVE, THE PARTIES FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLE ALL CLAIMS THEY HAVE OR MIGHT NOW HAVE AGAINST EACH OTHER 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.

Aleem A. Ghany

The City of North Miami

By: _____

Date: _____

Name: _____

Title: _____

Date: _____