

SEPARATION AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises, covenants, and agreements made herein by and among ROBIN GOMEZ (hereafter "GOMEZ," a term which includes GOMEZ and all his heirs, successors and assigns, agents, and attorneys), and the City of Clarkston, Georgia (hereafter "CITY," a term which includes the City of Clarkston, Georgia, all City elected officials, officers, directors, managers, employees, agents, attorneys, insurers, and successors and assigns of CITY), the parties agree to the following:

1. **Resignation by GOMEZ**

GOMEZ hereby voluntarily resigns his employment with the City effective Friday, September 17, 2021, at 5:00 p.m. This Separation Agreement is intended to and shall end the Employment Agreement between the parties dated December 4, 2018, as amended.

2. **Severance Payment**

In consideration of GOMEZ's covenants and promises contained herein, the City agrees to pay GOMEZ the sum of Sixty One Thousand Eight Hundred Dollars (\$61,800.00). Said payment will be delivered to GOMEZ no later than September 27, 2021.

3. **Health Insurance**

CITY agrees to make premium payments necessary to maintain GOMEZ's current health insurance coverage (including coverage for his family members currently covered by such insurance) through December 31, 2021, under the COBRA program. CITY shall make such premium payments directly to the insurer. The parties intend for the premium payments under the COBRA program to be nontaxable to GOMEZ; however, in the unlikely event that said premium payments result in the imposition of a tax upon GOMEZ, then GOMEZ shall be responsible for paying or satisfying any such tax and hereby indemnifies and holds harmless the CITY against any and all claims for payment of taxes arising out of the premium payments under the COBRA program.

CITY's obligation pursuant to this section is subject to the following condition: if GOMEZ accepts employment with an employer that offers health insurance coverage comparable to his current plan then GOMEZ shall promptly notify CITY of such fact and the date that such insurance through a new employer will become available to him and, effective on the date that such insurance becomes available, the City shall have no further obligation to fund GOMEZ's health insurance through the COBRA program.

4. **Earned Benefits**

The parties agree that GOMEZ is entitled to be paid for vested but unused vacation leave time, pursuant to the City's personnel policies applicable to all employees. Specifically, GOMEZ has accrued 109.93 hours of vacation time, which has a cash value of \$6,533.14. CITY will deliver payment in this amount to GOMEZ no later than September 27, 2021.

5. **No Admissions**

GOMEZ and CITY agree that the entry of the parties into this Agreement, and the agreements contained herein, are not and shall not be considered to be an admission of liability on the part of any party hereto or any parties hereby released or held harmless.

6. **GOMEZ'S Release of Claims**

In consideration of the undertakings and promises set forth in this Agreement, GOMEZ releases, discharges, and holds harmless CITY, as defined herein, (the "Released Parties") from each and every claim, cause of action, right, liability, or demand of any kind and nature, and from any other claims which may be derived therefrom (collectively referred to as "claims"), that GOMEZ had, has, or might claim to have against the Released Parties, including, but not limited to, any and all claims:

- a. arising from GOMEZ'S employment, pay, bonuses, insurance, benefits, and other terms and conditions of employment or employment practices of CITY; and/or

- b. relating to the separation of GOMEZ'S employment or the surrounding circumstances thereof; and/or
- c. based on discrimination, harassment, or retaliation on the basis of race, color, religion, sex, sexual orientation, national origin, handicap, disability, age, or any other category protected by law under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, the Rehabilitation Act, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act, the Equal Pay Act, Executive Order 11246, and any and all Georgia state and local laws prohibiting discrimination; and/or
- d. based on any plan(s) sponsored by CITY, or arising out of the administration of such plan(s), including, but not limited to, claims for benefits, breaches of fiduciary duty, retaliation or any adverse employment action for asserting plan rights or to prevent asserting these rights; and/or
- e. based on any contract including, but not limited to, the "Employment Contract" dated December 4, 2018, as amended; and/or
- f. based on any theory of tort, whistleblower, personal injury, wrongful discharge, or retaliation; and/or
- g. based upon any claim for attorneys' fees and expenses; and/or
- h. based on any other federal, state or local constitution, regulation, law (statutory or common) or legal theory.

7. **GOMEZ'S Covenant Not to Sue or Accept Recovery**

GOMEZ agrees not to sue CITY or any Released Party on account of any claim released in this Agreement and agrees not to file any complaint against a Released Party with any federal, state or local agency. GOMEZ further agrees not to accept, recover or receive any monetary damages, equitable remedy, or any other form of relief which may arise out of or in connection

with any administrative remedies, which may be filed with or pursued independently by any governmental agency, whether federal, state or local.

Furthermore, it is the parties' intent that the payments made by CITY pursuant to this Agreement shall be the sole and final payments made by CITY to GOMEZ for any and all claims arising out of GOMEZ'S employment with CITY and that GOMEZ shall not be entitled to recover any additional sums from CITY.

GOMEZ also waives, foregoes, and releases any right to an appeal pursuant to the City's Charter, Code of Ordinances or personnel policies.

8. OLDER WORKERS BENEFIT PROTECTION ACT

This Agreement is intended to comply with the Older Workers Benefit Protection Act. GOMEZ acknowledges and agrees that he specifically is waiving rights and claims under the Age Discrimination in Employment Act. Specifically:

- A. GOMEZ understands the terms and conditions of this Agreement;
- B. GOMEZ has been advised of his right to consult an attorney to review the Agreement, and has had the benefit of or the option to consult an attorney throughout the separation process;
- C. GOMEZ does not waive any rights or claims that may arise after the date the waiver is executed;
- D. GOMEZ is receiving consideration beyond anything of value to which he already is entitled; and
- E. GOMEZ shall have up to 21 days to consider this Agreement and for a period of at least 7 days following the execution of this Agreement, GOMEZ may revoke the Agreement, and the Agreement shall not become effective or enforceable until the revocation period has expired.

9. City Property/GOMEZ's Personal Property

GOMEZ shall return any and all City property in his possession or under his control, including but not limited to, the 2016 Ford Explorer motor vehicle, computer/office automation equipment, passwords, keys, electronic ID cards, records, etc. and shall remove all of his personal property from City Hall by September 17, 2021 at 5:00 pm.

10. Statements to the Public and Third Parties.

The CITY and GOMEZ agree that they each will not make any disparaging comment about one another to the public, media or any third party. The only statement that either party will make regarding GOMEZ's employment with the City or separation therefrom is to state that Mr. Gomez served as City Manager from January 7, 2019 to September 17, 2021, that he was separated from employment with the City by mutual agreement and that the CITY and GOMEZ wish one another well in all future endeavors.

11. Miscellaneous

a. Assignment

Neither this Agreement nor any duties or obligations under this Agreement shall be assignable without the prior written consent of the other party.

b. Successors and Assigns

Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, legal representatives, successors, and assigns of the respective parties.

c. Attorney's Fees

The parties were each represented by their own counsel in the negotiation of this Agreement. The parties shall each be responsible for their own attorney's fees related to the drafting and review of this Agreement.

d. Governing Law

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Georgia.

e. Amendment

This Agreement may be amended only by the mutual agreement of the contracting parties in a writing to be attached to and incorporated into this Agreement.

f. Legal Construction

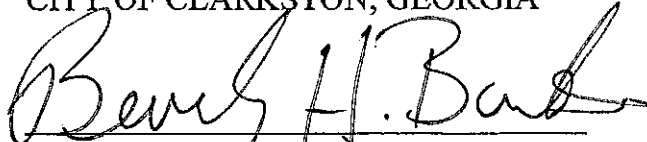
In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not effect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained it.

12. Entire Agreement

This Agreement supersedes any and all prior negotiations or agreements between the parties and represents the entire agreement between the parties with respect to Employee's employment with the City and separation therefrom. The parties hereby acknowledge and agree that there have been no offers or inducements which have led to the execution of this Agreement other than as stated herein. GOMEZ represents and warrants that he has fully read this Agreement, understands same, and enters into it freely.

The parties each execute this Separation Agreement:

CITY OF CLARKSTON, GEORGIA

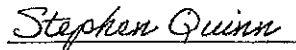

Beverly H. Burks, Mayor

Date: 9-7-21

Attest:

~~City Clerk~~

Approved as to Form:


Stephen G. Quinn
City Attorney


ROBIN GOMEZ

Date: 8-25-2021