



COUNCIL AGENDA STATEMENT

Meeting Date: January 14, 2020
To: Honorable Mayor and City Councilmembers
From: David Migut, City Attorney
Copy: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2020-08**, Approving A Separation Agreement And General Release Between David Migut And The City Of Marathon; Authorizing The Mayor To Execute The Agreement And Appropriate Funds; And Providing For An Effective Date.



BACKGROUND & JUSTIFICATION:

This Agreement will end the current employment of City Attorney David Migut with the City of Marathon, effective Friday, January 19, 2020. Mr. Migut releases the City from any and all claims he may have against the City. In consideration for such release, the City agrees to pay Mr. Migut the severance amounts listed in his employment contract: 20 weeks, plus payout of all accrued and unused vacation and sick time (which is approximately 290 hours, or 7 ¼ weeks).

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not Applicable <u> X </u>		

FISCAL NOTE:

Approval of this resolution will appropriate funds in the FY20 legal department budget in the General Fund to pay out Mr. Migut’s accrued sick and vacation leave through 1/17/20, as well as, 20 weeks of severance pay.

RECOMMENDATION: Council approve Resolution

Sponsored by:

**CITY OF MARATHON, FLORIDA
RESOLUTION 2020-08**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A SEPARATION AGREEMENT AND GENERAL RELEASE BETWEEN DAVID MIGUT AND THE CITY OF MARATHON; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND APPROPRIATE FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, David Migut (Employee) is currently employed by the City of Marathon (Employer) in the position of City Attorney pursuant to that certain Employment Agreement dated July 28, 2015, as amended; and

WHEREAS, Employee and Employer have determined that it is in the best interest of each that the Employee terminate his employment with Employer; and

WHEREAS, Employee and Employer have agreed that Employee will receive certain benefits and payments, as more fully detailed in the Separation Agreement and General Release, in exchange for execution of such agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves the Separation Agreement and General Release between the City and David Migut, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Council and approved as to form and legality by the City's special counsel for this matter.

Section 3. The Mayor is authorized to execute the Agreement on behalf of the City and expend appropriated funds.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 14th day of January, 2020.

THE CITY OF MARATHON, FLORIDA

Steven Cook, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

Special Counsel

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (“Agreement”) is entered into by and between David Migut (“EMPLOYEE”) and the City of Marathon (the “EMPLOYER”).

WHEREAS, EMPLOYEE is currently employed by EMPLOYER in the position of City Attorney pursuant to that certain Employment Agreement dated July 28, 2015, as amended (“Employment Agreement”); and

WHEREAS, EMPLOYEE and EMPLOYER have determined that it is in the best interest of each that the EMPLOYEE terminate his employment with EMPLOYER; and

WHEREAS, EMPLOYEE and EMPLOYER have agreed that EMPLOYEE will receive certain benefits and payments, as more fully detailed herein, in exchange for execution of this Agreement;

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, EMPLOYEE and EMPLOYER, intending to be legally bound, agree to the following:

1. Termination of Employment. EMPLOYEE’s employment with EMPLOYER is terminated as of January 17, 2020 (the “Termination Date”). For classification purposes only, EMPLOYEE’s employment shall be listed as having ended by voluntary resignation. From the date of execution of this Agreement until the Termination Date, EMPLOYEE shall be continue to be paid in bi-weekly installments, along with all benefits to which he is entitled pursuant to the Employment Agreement (including the continued accrual of Leave) and general City policies, as he was preceding the execution of this agreement. Following the Termination Date, as part of EMPLOYEE’s final paycheck, in addition to payment of all regular wages, EMPLOYEE shall also be paid:

-A lump sum severance payment equal to twenty (20) weeks of base salary as provided in Section 11 of the Employment Agreement; and

-A lump sum payment of all accrued and unused vacation and sick leave as provided in Section 11 of the Employment Agreement, with accrual being calculated to and through January 17, 2020.

2. Full and General Waiver of All Rights and Claims. Other than as described in this Agreement, 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 EMPLOYER (including but not limited to, its current and former members, officers, attorneys, employees, agents, successors and assigns) 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; or
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance.

EMPLOYEE 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 his employment with EMPLOYER, the termination of 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 EMPLOYER 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 EMPLOYER 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. Covenant Not to Sue. EMPLOYEE represents and agrees that he will not hereinafter pursue, initiate, or cause to be instituted any dispute released herein against EMPLOYER 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.

4. Consideration. In consideration for EMPLOYEE's knowing waiver and release of all claims against EMPLOYER, EMPLOYER agrees to provide EMPLOYEE with the benefits described in Paragraph 1 above. The parties agree and acknowledge that the payment as delineated above constitutes good, valuable and sufficient consideration for EMPLOYEE'S full waiver and release of all claims and his fulfilling all other promises as set forth herein.

5. 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.

6. 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 EMPLOYER'S City Manager by 5:00 p.m. on the seventh (7th) day following EMPLOYEE'S execution of this Agreement. EMPLOYEE understands and agrees that, in the event that he revokes this Agreement, this Agreement will become null and void, and the EMPLOYER will owe nothing pursuant to this Agreement.

7. Miscellaneous. The following additional terms and conditions shall be a part of this Agreement:

a. All benefits to EMPLOYEE not specifically mentioned will be honored in accordance with EMPLOYER'S policies and procedures.

b. Mutual Non-disparagement Clause.

After the date of execution of this agreement, EMPLOYEE agrees that he shall not, directly or indirectly, take or attempt to take any of the following actions: disparage, defame or make derogatory or negative statements to any person or entity regarding EMPLOYER.

After the date of execution of this agreement, EMPLOYER agrees that its principals, elected officials and employees, shall not, directly or indirectly, take or attempt to take any of the following actions: disparage, defame or make derogatory or negative statements to any person or entity regarding EMPLOYEE.

c. Subject to any applicable public records law, EMPLOYER and EMPLOYEE shall keep confidential all of the terms and provisions of 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 EMPLOYER will execute this Agreement, provided it has been approved by the Marathon City Council.

9. 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.

10. Entire Agreement. This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements and 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.

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

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

13. Acknowledgment. EMPLOYEE acknowledges that he has carefully read and understands this Agreement and agrees that the EMPLOYER 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 EMPLOYER. Lastly, EMPLOYEE acknowledges that he has been advised to consult with an attorney prior to executing this Agreement.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, EMPLOYEE and EMPLOYER have executed this Agreement and General Release as set forth below.

THE CITY OF MARATHON, FLORIDA

Steven Cook, Mayor

Date Signed: _____

ATTEST:

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

Special Counsel

DAVID MIGUT

Witnesses:

David Migut

Date Signed: _____