

RESOLUTION NO. 22-05-39

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE SEPARATION AGREEMENT AND GENERAL RELEASE BETWEEN THE VILLAGE AND ROGET BRYAN; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE

WHEREAS, Islamorada, Village of Islands (the "Village"), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to Section 7 of the Village Charter, the Village Attorney is the Chief Legal Officer of the Village; and

WHEREAS, in September 2013, the Village Council of Islamorada, Village of Islands (the "Village Council") selected Mr. Roget Bryan ("Bryan") to serve as the Village Attorney; and

WHEREAS, on October 10, 2013, the Village Council adopted Resolution No. 13-10-78, thereby approving an Employment Agreement between Bryan and the Village; and

WHEREAS, the Village and Bryan have determined that it is the best interest of each party that the Employment Agreement be terminated, and that Bryan will cease working for the Village as its Village Attorney; and

WHEREAS, the parties have memorialized the terms of their Agreement relating to Bryan's separation terms and conditions in the form of the Separation Agreement between the Village and Bryan attached as Exhibit "A" hereto; and

WHEREAS, the Village Council finds that approval of the Separation Agreement between the Village and Bryan is in the best interests of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Employment Agreement. The Village Council hereby approves the Separation Agreement between Islamorada, Village of Islands, and Roget Bryan (the "Agreement"), a copy of which is attached hereto as Exhibit "A," together with such non-material changes as may be approved as to form and legality by the Village's special counsel for this matter.

Section 3. Authorization of Village Officials. The Mayor is hereby authorized to execute the Agreement on behalf of the Village. The Acting Village Manager is hereby authorized to take all necessary and expedient action to effectuate the intent of this Resolution.

Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

Motion to adopt by Mayor Pete Bacheler, second by Vice Mayor Henry Rosenthal.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA:

Mayor Pete Bacheler	Yes
Vice Mayor Henry Rosenthal	Yes
Councilman Mark Gregg	Yes
Councilman Joseph B. Pinder III	Yes
Councilman David Webb	Absent

PASSED AND ADOPTED this 12th day of May, 2022.



PETE BACHELER, MAYOR

ATTEST:



MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY



Special Counsel for Islamorada, Village of Islands

SEPARATION AGREEMENT AND MUTUAL GENERAL RELEASE

This Separation Agreement and Mutual General Release (the "Agreement") is entered into by and between Islamorada, Village of Islands, Florida, a municipal corporation (the "Village") and Roget Bryan ("Bryan") (collectively the "Parties").

WHEREAS, Bryan was retained by the Village as Village Attorney pursuant to an Employment Agreement effective October 10, 2013 (the "Employment Agreement"); and

WHEREAS, the Employment Agreement was first amended on December 22, 2014, and remains in effect "until terminated by either the Village or Village Attorney;" and

WHEREAS, the Village and Bryan have determined that it is the best interest of each party that the Employment Agreement be terminated, and Bryan will cease working for the Village as its Village Attorney; and

WHEREAS, the Parties wish to memorialize the terms of their Agreement relating to Bryan's separation.

NOW THEREFORE, in consideration of the mutual covenants and considerations contained herein, the Parties agree as follows:

Section 1. Separation from Village.

Bryan will cease performing all duties of the Village Attorney and his role as Village Attorney will cease effective close of business on Friday, May 20th, 2022 (the "Separation Date"). For classification purposes only, Bryan's employment shall be listed as having ended by resignation. From the date of execution of this Agreement through the close of business on the Separation Date, Bryan shall continue to be paid in bi-weekly installments, along with all benefits to which he is entitled pursuant to the Employment Agreement and general Village policies, as he was preceding execution of this Agreement.

Section 2. Severance Payment.

In consideration for Bryan's agreement to enter into this Agreement and provide the release set forth herein, and in addition to fulfilling the other promises set forth in this Agreement, the Village agrees to provide Bryan:

- (a) with a total sum severance payment equivalent to twenty (20) weeks of pay at the rate of pay in effect on the date of separation.
- (b) All of Bryan's accrued and unused sick and vacation leave, calculated at his rate of pay in effect at the date of his separation.
- (c) The insurance benefits and retirement benefits outlined in Section 4 of the Employment Agreement for the twenty (20) weeks subsequent to his separation.

The consideration listed above in paragraphs (a)-(c) will hereafter be referred to as the "Severance Amount." The Severance Amount will be paid within thirty (30) days of the Effective Date of this Agreement as defined herein. Bryan acknowledges and agrees that the Severance Amount constitutes adequate and ample consideration for the rights and claims Bryan is waiving under this Agreement and for the obligations imposed upon Bryan by virtue of this Agreement and his fulfilling all other promises set forth herein.

Section 3. Assistance Following Separation.

Bryan agrees to remain reasonably available to respond to requests for information directed to Bryan by the Village. Bryan also agrees to cooperate fully with respect to any claim, litigation or judicial, arbitral or investigative proceeding initiated by the Village, any Village employee or agent, or by any regulator, governmental entity, or self-regulatory organization, that relates to or arises from any matter with which Bryan was involved during his time as Village Attorney, or that concerns any matter of which Bryan has information or knowledge (collectively, a "Proceeding"). In addition, Bryan agrees to promptly notify the Village Attorney's Office of any requests for information or testimony that Bryan receives in connection with any Proceeding relating to the Village's business. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed or applied so as to compel any party to take any action, or omit to take any action, requested or directed by any regulatory or law enforcement authority. The Village shall exercise reasonably good faith efforts to minimize its requests for information pursuant to this Section.

Section 4. Return of Property.

Bryan will forthwith return to the Village all of the Village's property including, but not limited to, computers, computer equipment, office equipment, cell phone, keys, passcards, credit cards, software, computer files, and any other record, document or piece of equipment belonging to the Village or related to the work which Bryan has done for the Village. Bryan will not retain any copies which are the Village's property, including any copies existing in electronic form, which are in Bryan's possession or control. Bryan acknowledges that Bryan has not and will not destroy, delete, or alter any Village property without the Village's consent.

Section 5. Confidentiality.

A. Bryan acknowledges that as a direct result of his position as Village Attorney, Bryan had access to, learned about, and became familiar with confidential, privileged and proprietary information relating to and/or belonging to the Village, its elected officials and/or staff that is not public record ("Confidential Information"). Bryan shall not utilize or disclose to any third parties any Confidential Information in any manner whatsoever, unless required by law. If Bryan has any questions concerning the confidentiality of any information, he shall first make inquiry of the Village before disclosure through the Village Manager. The Village Manager's judgment shall control as to confidentiality determinations.

B. Bryan agrees that, except as required by a lawful order of a court of competent jurisdiction or to the extent that he has received written authorization from the Village, he will not, at any time or in any manner whatsoever, either directly or indirectly, reveal, divulge,

disclose, or communicate to any person, firm or corporation any Village documents or information that are exempt or confidential under Chapter 119, Florida Statutes, including but not limited to documents or information that constitute non-public attorney work product or attorney-client privileged communications under Chapter 119, Florida Statutes

C. If Bryan is contacted by any governmental agency concerning the Village, its elected officials and/or its staff, or is served with a subpoena to provide information, he shall immediately notify the Village of the same and shall provide the Village an opportunity to object or take other action with regard to the same. Nothing contained herein shall prevent Bryan from responding as required by law to a subpoena or from cooperating with any governmental agency that may initiate contact with Bryan in conducting any investigation or inquiry within the scope of the agency responsibility.

Section 6. Non-Disparagement.

The Village shall use its best efforts to cause its Council members and respective executive staff members (i.e., the Village Manager, the Village Clerk, and Department Directors) not to make or publish any statement verbally or in writing (including online or on social media) that is defamatory or disparaging of Bryan and shall not otherwise interfere in any way with his search for new employment. Bryan agrees that he will not make or publish any statement verbally or in writing (including online or on social media), that defames or disparages the Village, to include its employees, agents, administrators, and Council members. It is understood by the Parties that this clause continues beyond the date on which the Agreement becomes effective.

Section 7. General Release of All Claims.

A. Other than the covenants contained in this Agreement, Bryan willingly and voluntarily waives and releases any and all known and unknown rights and claims Bryan has or may have against the Village and its elected officials, management, agents, officers, employees and other contractors, including, but not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- Sections 1981 through 1988 of Title 42 of the U.S. Code;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990 and all amendments thereto;
- The Fair Labor Standards Act;
- The Older Workers Benefit Protection Act;
- Age Discrimination in Employment Act;
- The Equal Pay Act of 1963;

- The Occupational Safety and Health Act;
- The Family and Medical Leave Act of 1993;
- The Pregnancy Protection Act laws;
- Any Workers Compensation laws;
- Any Unemployment Compensation laws;
- All amendments to such Acts;
- Any other federal, state or local laws;
- All other human rights or fair employment laws or regulations whether federal, state or local; and
- Any public policy, contract, or common law claims, including any tort claims (including all intentional and negligent torts, negligent or intentional infliction of emotional distress, defamation, assault, battery, false imprisonment, wrongful termination, etc.) whether based on common law or otherwise.

B. Other than the covenants contained in this Agreement, the Village willingly and voluntarily waives and releases any and all known and unknown rights and claims Village has or may have against Bryan.

C. These waivers also bar any claim or demand for costs, fees, or other expenses, including attorneys' fees incurred in connection with any of the above referenced claims. The listing of claims waived in this Section is intended to be illustrative rather than exhaustive. Thus, the Parties acknowledge and agree that this Agreement constitutes a full and final bar to any and all claims of any type that Bryan now has against the Village, its elected officials, agents, officers and employees, or that the Village may have against Bryan.

D. To the extent that this waiver and release may require court approval, such as claims arising under Acts providing for workers compensation or FLSA benefits, Bryan affirmatively represents and covenants that there are no facts which would support a claim under such Acts and will attest to the same in any court or administrative proceedings.

Section 8. Non-Admission.

Bryan and the Village agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by the Village or Bryan of any kind.

Section 9. Time for Consideration.

A. Time to Consider Signing Agreement. Bryan 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. He understands and agrees that he can use all or any part of this period to decide whether to sign this Agreement and that, if he does not use the full period, he voluntarily waives it. He agrees that any changes to this Agreement from that originally presented to him will not restart the twenty-one (21) day consideration period.

B. Seven (7) Day Period to Revoke. For a period of seven (7) calendar days following the signing of this Agreement by Bryan, Bryan may revoke this Agreement by notifying Alison F. Smith, Esq., Weiss Serota Helfman Cole & Bierman, P.L., 200 E. Broward Blvd., Suite 1900, Fort Lauderdale, FL 33301, in writing, of Bryan's decision to revoke his Agreement. This Agreement shall not become effective or enforceable until that revocation period has expired. This Agreement shall become effective and enforceable eight (8) days after it is signed by Bryan, unless timely revoked by Bryan, in accordance with the provisions of Section 11, below. Bryan understands and agrees that, in the event that he timely revokes this Agreement, this Agreement will become null and void, and the Village will owe nothing pursuant to this Agreement.

Section 10. Effective Date.

This Agreement will become effective when each of the following conditions is met: 1) Bryan executes this Agreement, and; 2) eight (8) days have expired without revocation by Bryan (during the seven (7) day revocation period identified above in Section 11(b)).

Section 11. Governing Law and Interpretation.

This Agreement shall be governed and construed in accordance with the laws of the State of Florida, with exclusive venue in Monroe County, Florida. Its language shall be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

Section 12. Severability.

Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this in full force and effect. If the waiver language of this Agreement is declared unenforceable because of actions taken by Bryan or on his behalf, Bryan shall return all monies paid to him under this Agreement with ten (10) calendar days of the date on which the Agreement is declared unenforceable and this Agreement shall immediately become null and void, and the Village will owe nothing further pursuant to that Agreement.

Section 13. Entire Agreement; Amendment.

This Agreement sets forth the entire agreement between Bryan and the Village and shall supersede any and all prior agreements or understandings between the Parties. It may not be amended except by a written agreement signed by the Parties. Bryan has not relied upon any statements or representations not contained herein.

Section 14. Headings.

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

Section 15. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

Section 16. Encouragement to Consult Attorney.

The Village hereby encourages Bryan to consult an attorney before signing this Agreement. Bryan acknowledges that Bryan has consulted an attorney or had a full and complete opportunity to do so before signing this Agreement.

THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS SEVERANCE AGREEMENT AND GENERAL RELEASE AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE BRYAN AND THE VILLAGE. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, BRYAN FREELY AND KNOWINGLY AND, AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS BRYAN HAS OR MIGHT HAVE AGAINST THE VILLAGE.

IN WITNESS WHEREOF, the parties have executed this Severance Agreement and General Release as of the date set forth below.

Roget Bryan

By:  _____

Date: 5/16/22

Islamorada, Village of Islands

By:  _____
Pete Bacheler, Mayor

Date: 5/16/22

Attest:

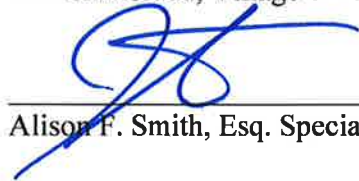


Marne McGrath, Village Clerk

Date: 5/16/22

Approved as to Form and Legal Sufficiency

For Islamorada, Village of Islands Only:



Alison F. Smith, Esq. Special Labor Counsel to the Village

Date: 5-25-22