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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

2/6/2024

BCC MEETING DATE

TO: Joy Andrews, County Administrator **DATE:** January 24, 2024

FROM: Joy Andrews, County Administrator **PHONE:** 904 209-0530

SUBJECT OR TITLE: Mutual Separation of the County Attorney

AGENDA TYPE: Consent Agenda, Resolution

BACKGROUND INFORMATION:

The County and the County Attorney, David Migut, have mutually agreed to separate Mr. Migut's employment. The County has determined it is in the best interest that the County accept the terms, conditions, provisions, and requirements of the Separation Agreement and General Release included herein.

1. IS FUNDING REQUIRED? No **2. IF YES, INDICATE IF BUDGETED.** No
IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:
INDICATE FUNDING SOURCE:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to approve Resolution 2024-____, regarding the mutual separation of David M. Migut as County Attorney, accepting the terms, conditions, provisions, and requirements of the separation agreement and general release between David M. Migut and the County, authorizing the Chair to execute the separation agreement and general release on behalf of the County.

For Administration Use Only:
Legal: N/A **OMB:** N/A **Admin:** AGC 1/29/2024

RESOLUTION NO. 2024-____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA REGARDING THE MUTUAL SEPARATION OF DAVID M. MIGUT AS COUNTY ATTORNEY, ACCEPTING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE SEPARATION AGREEMENT AND GENERAL RELEASE BETWEEN DAVID M. MIGUT AND THE COUNTY, AUTHORIZING THE CHAIR TO EXECUTE THE SEPARATION AGREEMENT AND GENERAL RELEASE ON BEHALF OF THE COUNTY.

WHEREAS, David M. Migut is currently employed by St. Johns County, Florida (the County) in the position of County Attorney pursuant to the Professional Services Agreement between David M. Migut and St. Johns County dated October 26, 2021 (the “Employment Agreement”); and

WHEREAS, the County and Migut have mutually agreed to separate Migut’s employment for reasons other than misconduct or Cause (per the terms of the Employment Agreement);

WHEREAS, the County has determined it is in the best interest that the County accept the terms, conditions, provisions, and requirements of the Separation Agreement and General Release attached as Exhibit “A” and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County:

1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

2. The Board of County Commissioners for St. Johns County approves the terms, conditions, provisions, and requirements of the Separation Agreement and General Release between David M. Migut and St. Johns County and authorizes the Chair to execute the Separation Agreement and General Release in substantially the same form and format as the attached draft on behalf of the County.

3. To the extent there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution and Separation Agreement, then this Resolution and Separation Agreement may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this _____ day of February, 2024.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

BY: _____
Sarah Arnold, Chair

ATTEST: Brandon J. Patty, Clerk of the Circuit Court & Comptroller

By: _____
Deputy Clerk

EXHIBIT A

SEPARATION AGREEMENT AND GENERAL RELEASE

This SEPARATION AGREEMENT AND GENERAL RELEASE (“Agreement”) is entered into by and between **St. Johns County** (the “County”), a political subdivision of the State of Florida, and **David M. Migut** (“**Migut**”).

WHEREAS, the County and Migut entered into a Professional Services Agreement, under which Migut is currently employed in the position of County Attorney; and,

WHEREAS, the County and Migut have mutually agreed to separate Migut’s employment for reasons other than misconduct or Cause;

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

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises set forth in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the undersigned parties agree as follows:

I. Definitions

For purposes of this Agreement, the following Definitions will apply:

- A. Separation Date. The “Separation Date” will be **February 9, 2024**.
- B. Effective Date. The “Effective Date” of this Agreement is the eighth (8th) calendar day after **Migut’s** execution of this Agreement, as set forth in Paragraph II.F(4) below, provided that **Migut** does not exercise his right to revoke as set forth in that paragraph.
- C. Released Parties. The “Released Parties” are the County, the St. Johns County Board of County Commissioners, its present or former Commissioners, executives, officers, directors, employees, agents, predecessors, successors, assigns, and representatives.
- D. Releasing Parties. The “Releasing Parties” are **Migut** and his attorneys, heirs, executors, administrators, representatives, agents, successors, and assigns.
- E. Administrative Proceeding. An “Administrative Proceeding” includes any charge or complaint or other action instituted with a federal, state, or local governmental agency other than the U.S. Equal Employment Opportunity Commission (“EEOC”).

II. Terms

- A. Return of County Property. If he has not already done so, **Migut** will return and give to the County as soon as possible, but no later than **February 9, 2024**, all equipment, mobile

phones, documents, tapes, files, computer files, and any copies thereof, which relate to the County's operations and which are in his possession, or under his direction or control.

B. Severance Benefits. In consideration for **Migut's** execution of this Agreement, and his release of claims as set forth below, and as provided for in the Professional Services Agreement, the County will provide to Migut the following severance benefits (the "Severance Pay"), provided that **Migut** does not exercise his right to revoke the ADEA waiver of this Agreement as set forth in **Paragraph II.F** below, and complies with all of the terms of this Agreement:

- (1) The gross amount of twenty (20) weeks of compensation at **Migut's** existing rate of pay, less any legal deductions (including, but not limited to, deductions for local, state and federal income and employment taxes). Said amount shall be paid in a lump sum within **twenty days** following the Effective Date of this Agreement. Said amounts represent sums to which **Migut** would not otherwise be entitled. **Migut** understands that these payments will not be considered compensation for purposes of deferrals and County match under the 401(k) Plan, or any other benefit plan, unless otherwise specifically required by the terms of any such plan.
- (2) In addition, the County hereby agrees to provide continuation of group insurance coverage for **Migut** and his eligible dependents for a period of twenty (20) weeks from the Separation Date, which coverage shall be equivalent to the level of coverage provided as of the Separation Date. The cost of such coverage to the County shall not exceed the County's cost for such group insurance in effect on the date of this Agreement. Any cost for coverage above that amount shall be the responsibility of **Migut**.

C. Not Otherwise Entitled. The parties agree that, apart from this Agreement, **Migut** is entitled to no payments or other consideration from the County, with the exception of payment for all earned and unused vacation time, and payment for one quarter of his accrued and unused sick leave, as provided for by County policy for senior management employees. **Migut** understands that this payment will not be considered compensation for purposes of deferrals and County match under the 401(k) Plan, or any other benefit plan, unless specifically required by the terms of any such plan.

D. No Further Obligation. **Migut** agrees that he has been paid all earned and accrued compensation, less applicable deductions, through the Separation Date.

E. Employee Benefits. **Migut** further agrees that, except as provided herein, after the Separation Date he will no longer be an active participant in any of the County's benefit plans, and that accrual of benefits and contributions on his behalf will end as of the Separation Date, subject to the specific terms and requirements of each plan and to his right to elect continuation coverage under the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) or to elect conversion coverage under any other benefit plan in which such right is provided.

F. Acknowledgements. **Migut** acknowledges that he has read and understands this Agreement, and he specifically acknowledges the following:

(1) That he has been advised by the County to consult with an attorney, and has had the opportunity to consult with an attorney, before signing this Agreement; and

(2) That this Agreement and Release was provided to him on **January 22, 2024** (which is on or before the Separation Date), and that he has been given twenty one (21) days to decide whether to sign this Agreement. The parties agree that any changes, whether material or immaterial, to the originally-offered Agreement do not restart the twenty-one (21) day period; and

(3) That he is waiving, among other claims, age discrimination claims under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §621, *et seq.*, and all amendments thereto; and

(4) That if he signs this Agreement, he has seven (7) calendar days from the date he signs this Agreement in which to revoke his signature, and that the Agreement will not become effective or enforceable until after the Effective Date (in other words, the revocation period must have expired, and **Migut** must not have exercised his right to revoke). Specifically, **Migut** understands that he will not receive the Severance Pay referred to in Paragraph II.B until after the Effective Date. To revoke this Agreement, **Migut** must send a written notice to **Ann Ashworth** no later than the eighth (8th) calendar day after **Migut’s** signing of the Agreement; and

(5) That, by signing this Agreement, the parties are not waiving or releasing any claims based on actions or omissions that occur after the date of the signing of this Agreement.

G. Release. In exchange for the Severance Benefits described in Paragraph II.B above, the Releasing Parties fully release and discharge the Released Parties from any and all claims of any nature, whether known or unknown, which **Migut** may have arising out of or in connection with his employment or separation of his employment, through the Effective Date of this Agreement.

This release includes, but is not limited to, claims under the following: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended; the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §621, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*; the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* (except such rights as may be vested under any retirement plan sponsored by the County); any claims under Florida or other state laws, including but not limited to the Florida Civil Rights Act, as amended, Section 760.01 *et seq.*, Fla. Stat.; the Florida Whistleblower’s Acts, Sections 112.3187 *et seq.* and 448.101 *et seq.*, Fla. Stat.; Section 440.205, Fla. Stat.; Sections 448.01, 448.07, 448.08, 448.110, and 760.50, Fla. Stat; the Federal Civil Rights Act of 1991, P.L. 103-50; the Family and Medical Leave Act of 1993, 29 U.S.C. Section 2601 *et seq.*; the Federal Rehabilitation Act of 1973, as amended, 29 U.S.C. Sections 793 and 794; the Consolidated Omnibus Budget Reconciliation Act of 1986; the Florida and/or United States Constitutions, as amended; the Civil Rights Acts of 1866 and 1871, 42 U.S.C. Sections 1981, 1983, 1985 and 1986; or any claims for wrongful discharge, discrimination, retaliation, harassment, breach of contract,

intentional or negligent infliction of emotional distress, defamation, interference with contract, or any other cause of action based on federal, state, or local law or the common law, whether in tort or in contract. **Migut** further agrees that he and the Releasing Parties will not institute any claim or any legal or Administrative Proceeding (as defined in Paragraph I.E, above) against the Released Parties as to any matter based upon, arising out of, or related to his employment, compensation during his employment, or separation of his employment with the County. If **Migut** files a charge with the U.S. Equal Employment Opportunity Commission that would otherwise have been released by this paragraph, **Migut** may be limited to non-monetary relief.

H. Covenant Not to Sue. **Migut** represents and agrees that he will not hereinafter pursue, initiate, or cause to be instituted any dispute released herein against the County 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.

I. Non-Admission of Liability. The parties agree and acknowledge that the terms of this Agreement do not constitute and shall not be interpreted as an admission on the part of any party of any liability or unlawful or improper conduct whatsoever. The parties also agree that all persons and/or parties released hereby are entitled to plead the Agreement as a defense to any claims made as a result of **Migut's** employment with the County and/or separation from the County.

J. 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. **Migut** 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.

K. Governing Law and Severability. This Agreement is governed by 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.

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

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

MIGUT ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS SEPARATION AGREEMENT AND GENERAL RELEASE, AND KNOWS AND UNDERSTANDS ITS CONTENTS, AND VOLUNTARILY SIGNS IT OF HIS OWN FREE WILL.

IN WITNESS WHEREOF, the **Migut** and the County have executed this Agreement as set forth below.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: _____
Sarah Arnold, Chair

ATTEST: Brandon J. Patty, Clerk of the Circuit Court & Comptroller

By: _____
Deputy Clerk

DAVID M. MIGUT

David M. Migut

Date signed: _____