



# City of Indian Rocks Beach

1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33785

[www.indian-rocks-beach.com](http://www.indian-rocks-beach.com)

Administrative  
727/595 2517

Library  
727/596 1822

Public Works  
727/595 6889

**AGENDA**  
**CITY OF INDIAN ROCKS BEACH**  
**CITY COMMISSION SPECIAL MEETING**  
**WEDNESDAY, JUNE 7, 2023 @ 10:00 A.M.**  
**CITY COMMISSION CHAMBERS**  
**1507 BAY PALM BOULEVARD**  
**INDIAN ROCKS BEACH, FLORIDA 33785**

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**CALL TO ORDER**  
**PLEDGE OF ALLEGIANCE**  
**ROLL CALL**

- 1. CITY CLERK PROPOSED VOLUNTARY SEPARATION AGREEMENT.**
- 2. INTERIM CLERK DESIGNATION.**
- 3. CITY CLERK VACANCY.**
- 4. ADJOURNMENT.**

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**APPEALS:** Any person who decides to appeal any decision made, with respect to any matter considered at such hearing, will need a record of the proceedings and, for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, per s. 286.0105, F.S. Verbatim transcripts are not furnished by the City of Indian Rocks Beach and should one be desired, arrangements should be made in advance by the interested party (i.e. Court Reporter).

In accordance with the Americans with Disability Act and s. 286.26, F.S., any person with a disability requiring reasonable accommodation in order to participate in this meeting should contact the City with your request, telephone 727/595-2517, no later than one (1) business day prior to the proceeding for assistance.

POSTED: June 5, 2023

## SEPARATION AGREEMENT AND WAIVER

**A Contractual Agreement Providing for a Non-Controverted Separation from Employment With, and Waiver of Claims Against the City of Indian Rocks Beach in settlement of all disputes, and Providing for Specified Considerations to be Provided in Conjunction with such Separation and Waiver.**

### I. INTENT & EFFECTIVE DATE

It is the intent of the two Parties executing this contractual Agreement to reach accord on provisions to be herein specified for the purpose of providing for a non-controverted separation from the **CITY OF INDIAN ROCKS BEACH'S** ("City") employment on the part of **DEANNE O'REILLY**, (hereinafter "Employee," together with City, the "Parties") with such separation to be **effective as of 12:00 p.m., Wednesday, June 7, 2023** (the "Effective Date").

### II. SPECIFIED CONSIDERATION TO BE PROVIDED TO EMPLOYEE

**A. Leave Compensation.** As Employee has exhausted all forms of accrued compensatory time, annual leave, or sick leave, employee shall not receive any payment or other form of compensation for accrued leave time.

**B. Severance Payment.** As additional consideration for this Agreement, and in particular the granting by the Employee of the waiver contained herein, the City Commission hereby approves a higher level of severance than provided for in the foregoing paragraph (A), which will provide the Employee with an additional lump sum severance payment of **\$38,009.80**, (the "Severance Payment"). The Severance Payment represents twenty (20) weeks' gross pay of the Employee's **\$98,830.00** annual salary.

**C. Timing and Nature of Additional Compensation Payment.** It is agreed that the additional severance payment provided for in paragraph (B) above will be paid not more than fifteen (15) calendar days from the date that the Employee executes this Agreement, and that it will be processed through the formal payroll process, with all applicable payroll taxes withheld. Payment may be delayed beyond fifteen (15) calendar days if Employee fails or refuses to surrender any City property, as required by Section IV of this Agreement.

**D. Insurance.** The City agrees to provide Employee with a notice of rights under the Consolidated Omnibus Reconciliation Act ("COBRA").

**E. Retirement Contribution.** City will not make any further contribution to Employee's retirement in connection with or relating to her separation of employment from the City.

**F. Unemployment Benefits.** The Parties agree that this Agreement has no impact on Employee's right to file a claim for unemployment benefits pursuant to Florida law, and that any such claim will be processed by the State of Florida, and that the City does not have unilateral authority over whether benefits are granted by the State of Florida.

**G. Statutory Compliance.** The Parties agree that Pursuant to Florida Statutes § 215.425(4)(d), the funds the City has agreed to expend in paragraph (B) above does not exceed an amount equal to 20 weeks of Employee's current weekly gross compensation.

### III. WAIVER OF CLAIMS OR DAMAGES SUITS ARISING FROM EMPLOYMENT RELATIONSHIP OR SEPARATION THEREFROM

**A. Waiver.** In consideration of the City's grant of the additional severance benefits provided for in paragraph II (B) above, Employee does hereby specifically release the City of Indian Rocks Beach and its officers, employees, and agents, to the fullest extent allowed by law, from any and all claims whatsoever, at law or in equity, related to either Employee's employment with the City or Employee's separation from the City, including but not limited to any administrative claims or suits under the Americans with Disability Act; the

Florida Civil Rights Act; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1871, as amended and including 42 U.S.C. Sections 1981, 1983, or 1985; the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act; The Family and Medical Leave Act, the Genetic Information Nondiscrimination Act of 2008, the Occupational Safety and Health act; and Florida Statutes § 112.2187 and Chapters 110, 447, and 448. Employee further releases the City from actions founded on public policy, tort, other common law, and contract law (including any action relating to Employee's March 7, 1994, employment contract) and from actions regarding any and all assertions of rights for termination "for cause only" including but not limited to rights that may exist in law, contract, equity or ordinance.

**B. Class Waiver.** Employee further waives and releases any right to become, and agrees not to consent to become, a member of any class in a case in which claims are asserted against City that are related in any way to Employee's employment or the termination of Employee's employment with the City. If, without Employee's prior consent, Employee is made a member of a class in proceeding, Employee agrees to opt out of the class at the first opportunity.

**C. Florida Retirement System ("FRS").** The Parties agree that this Agreement has no impact upon, and does not release, any right or benefit under the Florida Retirement System including but not limited to medical benefits, which is administered by the State of Florida.

**D. Acknowledgments by Employee.** In agreeing to execute this Agreement and Waiver, Employee acknowledges that Employee:

1. is receiving something of value beyond those benefits which the City would otherwise be required to provide upon voluntary separation from employment pursuant to Employee's operative employment agreement; and
2. is advised by this writing that Employee has the right to, may wish to, and has had the opportunity to consult with an attorney prior to executing this Agreement and Waiver; and
3. understands that this Agreement and Waiver is not applicable to any claim arising after the date it is executed by City; and
4. has, but may waive, 21 days to consider this Agreement and Waiver, and is allowed seven (7) days after signing this agreement and waiver to revoke it by: 1) delivering to the City Attorney a written and signed revocation and, 2) tendering back or surrendering the right to any monetary consideration paid or payable by the City for the waiver granted in this Agreement (as provided for above); and with the understanding that such a revocation would make all provisions of the Agreement null and void, and with the understanding that under the "tender-back doctrine," no judicial or administrative action related to either Employee's employment with or separation from City may be maintained by Employee subsequent to a revocation unless and until Employee tenders back all consideration paid by the City for the waiver granted in this Agreement; and
5. does not suffer from any legal, mental, or physical disabilities or infirmities that would impact, disable or otherwise prevent the valid and legally binding execution of this Agreement; and
6. has not taken any drug or medication prior to executing this Agreement that would prevent her from understanding the terms of this Agreement; and
7. has entered into this Agreement knowingly and voluntarily, absent duress or undue influence from the City or any of its officials, agents, or employees; and

8. believes the execution of this Agreement to be in Employee's own best interest.

**IV. RETURN OF PROPERTY**

Employee agrees that all City property must be returned to the City before Employee is eligible to receive the excess severance payment consideration set forth above. By executing this Agreement, Employee represents that all City property in Employee's possession, custody, or control (including without limitation equipment, credit cards, keys, files, tools, computers, phones, electronic files (stored on local media or "cloud-based" locations), user IDs and passwords), has been returned to the City's possession or control.

Employee shall also deliver to the City Attorney, at or before the expiration of her tenure with the City on Wednesday, June 7, 2023, all public records kept or received by her in the transaction of official business, pursuant to Fla. Stat. § 119.021(4), regardless of whether the records exist on a government owned device, or in or on Employee's privately held documents, devices, or accounts.

**V. COSTS; ATTORNEY FEES; WAIVER OF JURY TRIAL**

The Parties agree that in any judicial or administrative action or proceeding relating to this Agreement's enforcement or interpretation, each Party shall bear its own costs of litigation (including services of professional experts) and attorney fees regardless of the outcome of such action or proceeding. The Parties further agree that in any such judicial or administrative action, to the extent either may have the right to jury trial, such right is hereby waived and may not be invoked by either Party.

**VI. RELIANCE**

The City acknowledges that Employee is entering into this Agreement in reliance upon the promises of the City and understandings of the Parties, both as contained herein, and that in the absence of such promises and understandings, Employee would not enter into this Agreement. Employee acknowledges that the City is entering into this Agreement in reliance upon the promises of Employee contained herein, and that in the absence of such promises the City would not enter into this Agreement.

**VII. FULL AGREEMENT & SEVERABILITY**

Both Parties acknowledge and affirm that this constitutes the full and complete agreement entered into with respect to the separation of Employee from City employment. There are no other informal or formal agreements between the Parties concerning Employee's separation from the City.

Both Parties further agree that should any one provision or part thereof of this Agreement be found to be invalid, such finding shall not impair the remainder of the Agreement, unless such provision is found to be material to this Agreement.

**VIII. EFFECTIVE DATE**

This Agreement shall become effective on the Effective Date notwithstanding the date(s) of actual execution by either Party.

**IX. APPLICABLE LAW**

This Agreement is made and entered into in the State of Florida and shall in all respects be interpreted, enforced, and governed by the laws of this State.

**X. EXECUTION OF AGREEMENT.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument. Photocopies, fax copies, and electronic copies of signatures shall be deemed as binding as original signatures.

**PLEASE READ CAREFULLY, THIS AGREEMENT IS A LEGALLY BINDING DOCUMENT AND INCLUDES A GENERAL RELEASE OF CLAIMS**

**On Behalf of the City**

**Employee**

\_\_\_\_\_  
Joanne Moston "Cookie" Kennedy  
Mayor-Commissioner

\_\_\_\_\_  
Deanne O'Reilly

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Approved as to Legal Sufficiency**

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Randy Mora, City Attorney