

## **SEPARATION AGREEMENT**

FOR AND IN CONSIDERATION of the mutual promises, covenants, and agreements made herein by and among **ROY CLAIBORN BROWN** (hereafter "BROWN," a term which includes BROWN and all heirs, successors and assigns, agents, and attorneys), and **the City of Avondale Estates, Georgia** (hereafter "CITY," a term which includes the City of Avondale Estates, Georgia, all City elected officials, current or former officers, directors, managers, employees, agents, attorneys, insurers, and successors and assigns of CITY), the parties agree to the following:

### **1. Resignation by BROWN**

BROWN hereby voluntarily resigns his employment with the City effective Wednesday, February 28, 2018, at 5:00 p.m., in anticipation of retirement.

The parties mutually agree that BROWN vacates his position as City Manager effective February 14, 2018, at 5:00 p.m. For the period of February 14, 2018, at 5:00 p.m. through February 28, 2018, BROWN shall remain an employee and receive his usual salary and benefits. However, BROWN shall not act as City Manager during this period and shall not report to the City Hall for work. Instead, BROWN shall be on administrative leave during this period. BROWN shall provide consulting services to the City during this period pursuant to the Consulting Services Agreement between the parties dated February 14, 2018.

### **2. Severance Payment**

In consideration of BROWN's covenants and promises contained herein, the City agrees to pay BROWN the sum of Forty Four Thousand Seven Hundred Eighty Seven Dollars and Sixty Cents (\$44,787.60). Said payment will be delivered to BROWN no later than March 14, 2018.

### **3. Consultancy**

CITY agrees to engage BROWN as a consultant and BROWN agrees to consult with the person acting as City Manager during the period from February 15, 2018 through June 30, 2018. The specific terms of this

consultancy are set forth in the separate Consulting Agreement between the parties dated February 14, 2018.

**4. Health Insurance**

In consideration of BROWN's covenants and promises made herein, CITY agrees to make premium payments necessary to maintain BROWN's current health insurance coverage through December 31, 2018, under the COBRA program. City shall make such premium payments directly to the insurer.

CITY's obligation pursuant to this section is subject to the following condition: if BROWN accepts employment with an employer that offers health insurance coverage comparable to his current plan then BROWN 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 BROWN's health insurance through the COBRA program.

**5. Earned Benefits**

The parties agree that BROWN is entitled to be paid for vested but unused vacation and sick days, pursuant to the City's personnel policies applicable to all employees. Such payment will be made not later than March 15, 2018.

**6. No Admissions**

BROWN 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.

**7. BROWN'S Release of Claims**

In consideration of the undertakings and promises set forth in the Agreement, BROWN releases, discharges, and holds harmless CITY, as defined herein, the Downtown Development Authority of the City of

Avondale Estates (“DDA”) and every past or present director of the DDA (collectively 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 BROWN had, has, or might claim to have against the Released Parties, including, but not limited to, any and all claims:

- a. arising from BROWN’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 BROWN’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 February 11, 2008, and the purported First Amendment to that contract dated February 23, 2015; 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.

**8. BROWN'S Covenant Not to Sue or Accept Recovery**

BROWN 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. BROWN 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 or agencies, 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 BROWN for any and all claims arising out of BROWN'S employment with CITY and that BROWN shall not be entitled to recover any additional sums from CITY.

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

**9. CITY'S Release of Claims and Covenant Not to Sue or Accept Recovery**

Except as specifically limited in this section, CITY hereby releases any and all claims it may have against BROWN and covenants not to sue BROWN for any released claim. CITY does not release BROWN from any claims stemming from "dishonesty losses" as defined in Section 6 – Bonding Requirement of the Employment Contract between the parties dated February 11, 2008.

**10. Older Workers Benefit Protection Act**

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

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

**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. City Property/Brown's Personal Property**

BROWN shall return any and all property owned by CITY that

is in his possession or under his control, including but not limited to, computer/office automation equipment, passwords, keys, electronic ID cards, records, etc. and shall remove all of his personal property from City Hall by February 15, 2018, at 5:00 p.m.

**13. 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. BROWN represents and warrants that he has fully read this Agreement, understands same, and enters into it freely.

[SIGNATURE PAGE FOLLOWS]

CITY OF AVONDALE ESTATES, GEORGIA

\_\_\_\_\_  
Jonathan Elmore, Mayor (date)

Attest:

\_\_\_\_\_  
Gina Hill, City Clerk

Approved as to Form:

\_\_\_\_\_  
Robert E. Wilson  
City Attorney

\_\_\_\_\_  
ROY CLAIBORNE BROWN (date)