

TAB 9

POINT PAPER

CONSIDERATION OF SEVERANCE AGREEMENT AND GENERAL RELEASE – CRA DIRECTOR

July 20, 2009

ISSUE: In conducting a partial compliance audit of the City of Palmetto Community Redevelopment Agency, the Special Counsel has become aware of areas of concern regarding compliance with the Florida Constitution and Statutes, City ordinances and the CRA plan that if proven would be problematic for the CRA.

Remedial measures to date include the city commission stepping in as the CRA board and exercising those powers directly, appointment of a CRA advisory board, increased oversight by the City, and hiring of special counsel for a compliance audit.

BACKGROUND: The CRA Director, Tanya Lukowiak was placed on administrative leave with pay on June 16, 2009, and both parties began discussions regarding separation from employment.

In reviewing these matters with Mrs. Lukowiak and her counsel, Special Counsel, has determined it to be in the best interest of the City and Mrs. Lukowiak to terminate her employment as of the effective date of this Agreement, July 20, 2009. Counsel for Mrs. Lukowiak agrees. The effect of this agreement is to release the City from any liability under the Employment Agreement which by its terms is in place from August 1, 2007 through December 31, 2010, or any other liability. In consideration of this release, payment will be made in the amount of \$147,480.00 by the CRA and release of any potential claims related to the CRA. Mrs. Lukowiak has approved this Agreement.

MOTION: I move to authorize approval of the Severance Agreement and General Release and to authorize execution of the document on behalf of the Community Redevelopment Agency.

BUDGET IMPACT: The budget impact will be \$147,480.00, to be paid out of the Community Redevelopment Agency fund.

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MOTION: I move to authorize approval of the Severance Agreement and General Release and that the Mayor be authorized to execute the document on behalf of the City of Palmetto.

BUDGET IMPACT: The budget impact will be \$147,480.00, to be paid out of the Community Redevelopment Agency fund. There is no direct budget impact on the City of Palmetto's budget.

SEVERANCE AGREEMENT AND GENERAL RELEASE

THIS SEVERANCE AGREEMENT AND GENERAL RELEASE (the "Agreement") is entered into, by, and between the City of Palmetto, Florida, the City of Palmetto Community Redevelopment Agency (including, as to the Community Redevelopment Agency, any person or entity assuming or charged with the Agency's obligations, liabilities, and/or responsibilities of any kind), and all their present, past, and future trustees, board members, insurers, attorneys, representatives, and agents, and all their heirs, successors, and assigns, all in both their official and individual capacities (referred to herein as "EMPLOYER") and Tanya Lukowiak and all her successors, heirs, and assigns (referred to herein as "EMPLOYEE").

WHEREAS, EMPLOYEE and EMPLOYER desire to terminate any employment relationship between them; and

WHEREAS, EMPLOYEE and the Community Redevelopment Agency entered into that certain Employment Agreement between them signed by EMPLOYEE on December 13, 2007; and

WHEREAS, EMPLOYEE and EMPLOYER now desire to and do hereby rescind the Employment Agreement except as otherwise expressly set forth herein; and

WHEREAS, EMPLOYEE and EMPLOYER desire to terminate any employment relationship between them in an amicable manner and, by this agreement, avoid the uncertainties and burdens of disputes, including potential litigation, and, instead, without establishing precedent, desire to settle all actual or possible disputes between them.

NOW, THEREFORE, EMPLOYEE and EMPLOYER, in consideration of their mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, do hereby agree as follows:

1. **Representations.** EMPLOYEE and EMPLOYER acknowledge that the statements set forth above are true and correct and adopt them as if fully set forth herein.

2. **Rescission.** EMPLOYEE and EMPLOYER agree that the Employment Agreement is hereby rescinded, null, void, and of no legal effect, as of the date of execution of this Agreement by EMPLOYEE; provided, however, that paragraph 6, "Code of Ethics" of the Employment Agreement survives rescission of the Employment Agreement and remains fully in force and legal effect and remains enforceable.

3. **Termination of Employment.** EMPLOYEE agrees that any employment of her by EMPLOYER is terminated as of the Effective Date of this Agreement. EMPLOYEE shall remain on administrative leave with pay from the date of her execution of this Agreement until the Effective Date of this Agreement.

4. Consideration. In consideration of the promises made and obligations undertaken by EMPLOYEE herein, including, but not limited to, the release of all claims by EMPLOYEE against EMPLOYER, the City of Palmetto Community Redevelopment Agency agrees to pay to EMPLOYEE the total sum of \$147,480.00 (the "Payment"). The Payment shall be made within 10 business days of the Effective Date of this Agreement. EMPLOYEE acknowledges that the Payment is ample and adequate and that she would not be entitled to the Payment but for her entry into this Agreement. EMPLOYEE agrees and acknowledges that the Payment is the only payment or benefit to which she is entitled from EMPLOYER except as otherwise expressly set forth herein, if any. The Payment will be reported to the IRS on a Form 1099. EMPLOYEE acknowledges and agrees she is solely responsible for any and all taxes, interest, and/or penalties due to be determined to be due on the Payment. EMPLOYEE agrees that the Payment does not constitute wages or salary of any kind. EMPLOYEE will be entitled to disposition of her Accumulated Benefit in the City of Palmetto General Employees Retirement System (as that term is therein defined) as provided for by the terms of the Retirement System as of the Effective Date of this Agreement.

5. Release and Waiver of Claims. In exchange for the Payment and other provisions of this Agreement. EMPLOYEE irrevocably, knowingly, and voluntarily releases, waives, and forever discharges any and all claims, demands, actions, causes of action, charges, and/or disputes of any kind, whether known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequence thereof, which she has, had, or may now have against EMPLOYER, whether based in tort, contract, statute, or any other basis. The disputes released include, but are not limited to, claims under:

- The U.S. Civil Rights Act of 1964, as amended;
- Sections 1981 through 1988 of Title 42 of the U.S. Code;
- The Constitutions of the United States and of Florida;
- The Employee Retirement Income Security Act of 1974, as amended;
- Any state or federal whistleblower statutes;
- The Internal Revenue Code;
- COBRA;
- The Americans With Disabilities Act of 1990;
- The Florida Civil Rights Act;
- Chapter 440, Florida Statutes;
- Chapter 447, Part II, Florida Statutes;
- The U.S. Equal Pay Act;
- The Family and Medical Leave Act;
- The National Labor Relations Act;
- The Fair Labor Standards Act;
- The Florida Minimum Wage Act; and
- Any other federal, state, or local law, regulation or ordinance, without limitation.

EMPLOYEE acknowledges that the list above is illustrative and not exhaustive and that the release provision of this Agreement is intended to be construed as broadly as possible to cover any and all claims she has, had, or may now have against EMPLOYER. EMPLOYEE acknowledges that she may later discover facts in addition to or different from those she now knows or believes to be true with respect to the subject matter of this Agreement. EMPLOYEE agrees that such discovery shall not affect this Agreement, that she assumes the risk of such discovery, and that this Agreement shall remain in full force and effect and shall not be subject to rescission by reason of such discovery or difference in facts. EMPLOYEE acknowledges that she is waiving not only her right to recover money or obtain other relief based on any action that might be brought by any person or entity.

6. No Lawsuits or Claims. EMPLOYEE agrees not to institute or have instituted on her behalf any lawsuit or claim of any kind against EMPLOYER based on the claims she is waiving in this Agreement. EMPLOYEE understands that she is not precluded from filing a charge with an agency such as the Equal Employment Opportunity Commission, but that she is waiving any right to sue or receive any remedy or relief, including money damages, pursuant to such a charge. EMPLOYEE represents that she does not now have pending any lawsuit, charge, or claim of any kind against EMPLOYER. If it is determined that EMPLOYEE does have any pending claim of any kind against EMPLOYER, EMPLOYEE agrees to immediately withdraw with prejudice or dismiss with prejudice any such claim.

7. Future Employment. EMPLOYEE agrees that she will not seek or accept employment by EMPLOYER in the future. EMPLOYEE agrees that if it is discovered that EMPLOYEE has become employed by EMPLOYER, such discovery shall immediately be communicated to the other party. Further, any such discovery, no matter by whom made, shall effect an immediate resignation by EMPLOYEE and such employment or its termination shall not be the basis for any claim by EMPLOYEE or benefits for her of any kind whatsoever. This Agreement shall not preclude EMPLOYEE from serving in elective office of the City of Palmetto, if validly elected.

8. No Admission Of Wrongdoing. The parties acknowledge and agree that neither the signing of this Agreement by them nor the Payment to EMPLOYEE by EMPLOYER hereunder shall be deemed not construed as an admission by either Party of any liability or unlawful or wrongful conduct of any kind. The Parties acknowledge and agree that each denies any liability to the other or wrongful conduct of any kind.

9. Older Workers Benefits Protection Act/ADEA.

a. EMPLOYEE agrees and represents that she understands this Agreement;

- b. This Agreement is intended to and does waive rights under the Age Discrimination in Employment Act, as amended, and the Older Workers Benefits Protection Act.
- c. This Agreement does not waive any rights arising after the date the Agreement is effective.
- d. The consideration received by EMPLOYEE pursuant to this Agreement is in addition to anything of value to which she already is entitled.
- e. EMPLOYEE has been advised in writing to consult an attorney prior to executing this Agreement.
- f. EMPLOYEE has had ample time of at least 21 days in which to consider this Agreement.
- g. EMPLOYEE may revoke this Agreement within seven days of the execution of the Agreement (“the “Revocation Period”) by all parties. In order to make an effective revocation, EMPLOYEE must deliver a written notice of revocation to Mark P. Barnebey, City Attorney, Kirk Pinkerton, 1301 Sixth Avenue West, Suite 401, Bradenton, Florida 34205. The notice must be headed “Notice of Revocation” and must make clear and explicit reference to this Agreement and must state, “I HEREBY REVOKE THE SEVERANCE AGREEMENT.” The notice must be actually received at the address of Mr. Barnebey no later than 5:00 p.m. on the seventh calendar day following the date that EMPLOYEE executes the Agreement. In computing the Revocation Period, the date of signing shall be excluded and the next seven calendar days shall constitute the Revocation Period. However, should the seventh day fall on a Saturday, Sunday, or state or federal holiday, the end of the Revocation Period shall occur at 5:00 p.m. on the next following business day.

10. References. If asked, EMPLOYER shall provide only a neutral employment reference as to EMPLOYEE, consisting of dates of employment, positions held, job description, and wage.

11. Consultation of Attorney; Adequate Time For Consideration. EMPLOYEE acknowledges and agrees that EMPLOYER has and hereby does encourage her to consult an independent attorney of her choosing to counsel her as to the meaning and legal import of this Agreement and all its terms and the obligations she incurs under it. EMPLOYEE represents that she has consulted an independent attorney of her choosing regarding this Agreement. EMPLOYEE acknowledges and agrees that she has had ample time to consider whether to enter into this Agreement.

12. Effective Date. This Agreement is Effective upon expiration of the Revocation Period, provided an effective revocation has not been made.

13. Severability. If a court of competent jurisdiction declares illegal or unenforceable any provision or provisions of this Agreement (excepting only paragraph 4, "Release and Waiver of Claims"), which provision or provisions cannot be made legal or enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

14. Disputes. This Agreement shall be governed and construed according to the laws of the State of Florida. The language of the Agreement shall be construed as a whole, according to its plain meaning, and shall not be strictly construed against any party. In the event that any party to this Agreement institutes legal proceedings in a dispute arising from this Agreement, it is stipulated and agreed that such claim shall be heard by a judge and not a jury in Manatee County, Florida. EMPLOYEE agrees that venue is proper in Manatee County, Florida, and further agrees that she will not challenge or object to said venue. It is agreed that the prevailing party in such a dispute shall be entitled to its reasonable attorney's fees, expenses and costs.

15. Counterparts; Signatures by Electronic Transmission. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall be deemed one document. Any signature affixed to this Agreement and transmitted by electronic means shall be deemed an original and shall be valid and effective for all purposes.

16. Headings; Singulars And Plurals. Section headings in this Agreement are for convenience only and have no legal effect. As used in this document, the singular includes the plural and the plural includes the singular.

17. Acknowledgement. EMPLOYEE has read, understood, and fully considered this Agreement and all its terms. Both parties acknowledge and agree that this Agreement is the product of mutual negotiation and compromise between the parties. Having elected to enter into this Agreement, to fulfill the promises set forth herein, and to receive thereby the benefits set forth herein, EMPLOYEE, freely and knowingly and after full consideration, enters into this Agreement intending to waive, release, and create a final bar to any claims she has, had, or may now have against the EMPLOYER from the beginning of the world to the Effective Date.

18. Entire Agreement; Modification. This Agreement constitutes the entire agreement between EMPLOYER and EMPLOYEE regarding its subject matter. EMPLOYEE agrees that she has relied on no promises, representations, understandings, or communications of any kind, written or oral, in agreeing to enter this Agreement other than those set forth expressly herein. This Agreement may be modified only by a writing signed by EMPLOYER and EMPLOYEE or their respective successors, assigns, or authorized representatives.

19. Consequences of Breach. EMPLOYEE agrees that a breach of the No Lawsuits or Claims provision of this Agreement (i.e., paragraph 6) by her would result in immediate, irreparable, and continuing damage to EMPLOYER for which there would be no adequate remedy at law. In particular, EMPLOYEE agrees that such a breach would be a material breach of this Agreement. Therefore, in the event that EMPLOYEE breaches the No Lawsuits or Claims provision, she shall be liable for, and EMPLOYER shall be entitled to recover, liquidated damages in the amount of 10 percent of all amounts paid to her hereunder, plus attorney's fees and costs incurred in enforcing the provision. EMPLOYER shall also be immediately entitled to an injunction against any further breach. EMPLOYEE understands and agrees that actual damages flowing from such a breach or breaches are uncertain, and agrees that the amount of liquidated damages specified herein is reasonable under the circumstances. Moreover, should such breach or breaches occur before payment in full by EMPLOYER of any amounts payable hereunder, EMPLOYER will be relieved of the obligation to pay such remaining amounts.

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

EMPLOYEE

Tanya Lukowiak
TANYA LUKOWIAK

Date: 7/20/09

CITY OF PALMETTO

By: _____

Title: _____

Date: _____

*Before me this 20th
day of July 2009*

Patricia F. Horton

CITY OF PALMETTO COMMUNITY
REDEVELOPMENT AGENCY

By: _____

Title: _____

Date: _____

