



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

① ✓ 12/16/16 ②

Today's Date: 12/06/2016

DOCUMENT TITLE: SETTLEMENT OF EMPLOYMENT PRACTICES LIABILITY CLAIM IN THE
MATTER OF MICHAEL FLORENCO v. CITY OF FORT LAUDERDALE

COMM. MTG. DATE: 10/18/2016 CAM #: 16-1266 ITEM #: CM-1 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: J. Larregui/5106 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 1

Is attached Granicus document Final? ☒ YES ☐ NO

Approved as to Form: ☒ YES ☐ NO

Date to CCO: 12/6/16

Paul G. Bangel
Attorney's Name

PGB/JL
Initials

2) City Clerk's Office: # of originals: 1 Routed to: Gina Ri/CMO/X5013 Date: 12/7/16

3) City Manager's Office: CMO LOG #: dec 23 Document received from: CCO

Assigned to: L. FELDMAN ☐ S. HAWTHORNE ☒ C. LAGERBLOOM ☐
L. FELDMAN as CRA Executive Director ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM
(Initial/Date) ☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 1 originals to ☒ Mayor ☒ CCO Date: 12/7/16

4) Mayor/CRA Chairman: Please sign as indicated. Forward 1 originals to CCO for attestation/City seal (as applicable) Date: 12/14/16

5) City Clerk's Office: Retains 1 copy and forwards 1 original to: Rebecca McClam/HR/5847

Original Route form to CAO/J. Larregui

Rev. 7/6/16

AGREEMENT AND RELEASE

This Agreement and Release ("Agreement") is entered into, by and between Michael Florenco ("Florenco" or "Employee") and the City of Fort Lauderdale, a Florida municipality, its City Commissioners, officers, employees, attorneys, insurers, and agents of any kind, all in their official and individual capacities (collectively, "City").

WHEREAS, Florenco was last employed by the City as a Sergeant with the Fort Lauderdale Police Department; and

WHEREAS, following an internal affairs investigation, Florenco was dismissed from employment with the City of Fort Lauderdale; and

WHEREAS, Florenco has challenged the City's disciplinary proceedings (Seventeenth Judicial Circuit Case Number: CACE-15-020353, Fourth District Court of Appeal Case Number: 4D16-1892, Pending Arbitration before James Reynolds, Esq.); and

WHEREAS the parties wish to resolve and settle their differences without further litigation;

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows.

1. **Recitals.** The parties agree that the recitals above are true and accurate to the best of their knowledge and are incorporated as terms of this Agreement.

2. **Consideration.** In exchange for the mutual promises and consideration provided for herein, which is hereby acknowledged and agreed by the parties to be good, valuable, and adequate consideration for this Agreement, Florenco hereby waives and releases any claim, cause of action, or dispute of any kind that he has, had, or may have against the City from the beginning of the world to the effective date of this Agreement. Florenco represents and agrees that he does not have pending any claim, cause of action, or dispute of any kind against the City, other than those listed above, and promises not to prosecute, institute, have instituted, or cooperate in the institution or prosecution on his behalf any claim, cause of action, or dispute that is released hereby. The City represents and agrees that it does not have any pending claims, disputes or causes of actions against Florenco and hereby forever releases Florenco of any potential claims, disputes or causes of actions it may have against Florenco.

3. **Separation.** The City agrees to rescind its dismissal of Florenco from employment with the City of Fort Lauderdale and retroactively reinstate Florenco to his position as a police sergeant conditioned on Florenco's simultaneous resignation from his position effective on the same date that this Agreement is executed by all parties, and Florenco shall resign in good standing irrevocably from employment with the City immediately upon such reinstatement. Florenco's resignation shall be



permanent and unconditional and he further agrees not to apply for employment or seek independent contractor work with the City in the future.

4. **Payment.** The City agrees to pay Florenco the total sum of Fifty Thousand Dollars (\$50,000.00) which will be considered earnings for the period covering November 23, 2015 to the date of the full execution of this agreement. The City will deduct from the \$50,000.00 any ordinary income tax and any required employee pension contribution. . In addition, the Employee will be paid his sick leave and vacation leave accrued as of November 23, 2015, in accordance with the respective applicable provisions of the Agreement between the City of Fort Lauderdale and the Fort Lauderdale Police Lodge 31 Police Officers & Sergeants, subject to the same aforementioned employee income tax and pension contribution/deductions. Inasmuch as this settlement was tentatively agreed upon on or about September 2, 2016, benefits will be payable as if Florenco had resigned in good standing with at least two-weeks' notice to the City. Upon resignation, Florenco will not be entitled to any other employee benefits, the only exceptions being the pension benefit contained paragraph #5, the earnings aforementioned and the above referenced leave accrual benefits.

5. **Pension and Credited Service.** For pension purposes , Florenco will be deemed to have been a regular full-time employee and member (i.e. police sergeant) of the City of Fort Lauderdale pension system from the time of his dismissal up to and including the date this Agreement is fully executed and will be considered eligible by the City to all his credited service to his pension as if there was never any interruption in his employment status. The parties acknowledge that the City of Fort Lauderdale does not control the final calculation of Florenco's pension benefits, but the City of Fort Lauderdale will not oppose Florenco's request that his employment/credited service time should be construed as uninterrupted membership. The parties further agree that any decision by the Pension Board will not otherwise impact the remainder of this Agreement. Nothing in this agreement in any way restricts, prohibits or limits Florenco's vested pension rights, nor does it prohibit Florenco from appealing any determination of the Pension Board related thereto.

6. **Release and Waiver.** Florenco hereby voluntarily releases, waives and forever discharges any and all claims, demands, actions or causes of actions of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the City related in any way to his former employment, former remunerations, separation from employment and the facts or circumstances giving rise to such separation from employment and matters regarding any and all injuries suffered or alleged to have been suffered in connection with any relationship of whatsoever kind or nature, which arose between the parties, from the beginning of the world until the date of execution of this Agreement, including, but not limited to, any claim(s) under:

- Any Employment Agreement or other contract between the parties;
- Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (42 U.S.C. § 2000e, *et seq.*);



- The Civil Rights Act;
- The Florida Civil Rights Act of 1992, including Chapter 760, Florida Statutes;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Age Discrimination in Employment Act of 1967;
- The Older Workers Benefit Protection Act;
- Workers' Compensation or Retaliation Claims, including Chapter 440, Florida Statutes;
- Florida Wage and Hour Laws;
- Florida and federal whistle-blower laws, including Chapter 112, Florida Statutes and Chapter 448, Florida Statutes;
- The Florida Public Employees Relations Act;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Family and Medical Leave Act of 1993;
- The Occupational Safety and Health Act;
- Any other federal, state, or local civil or human rights law and any other federal, state, or local law, regulation, or ordinance;
- Florida Sunshine/Public Records law, Chapter 119, Florida Statutes;
- Any public policy, contract, or common law claims, including any tort claims, whether based on common law or otherwise, excluding this agreement.
- Any claim for costs, fees or other expenses incurred in the released matters or any other matter.

Florenco understands that the foregoing list of causes of action which have been waived is meant to be illustrative rather than exhaustive, and understands and acknowledges that he is waiving and releasing the City from any and all causes of action of any nature whatsoever that he has or may have against the City related in any way to his former employment, former remunerations, separation from employment or the facts or circumstances giving rise to such separation from employment or matters regarding all injuries suffered or alleged to have been suffered in connection with any relationship of whatsoever kind or nature, which arose between the parties, from the beginning of the world until the date of execution of this Agreement. It is Florenco's intention to fully, finally and forever resolve and release any and all disputes he may have or believe himself to have against the City related in any way to his former employment, former remunerations, separation from employment or the facts or circumstances giving rise to such separation from employment, or matters regarding all injuries suffered or alleged to have been suffered in connection with any relationship of whatsoever kind or nature, which arose between the parties, from the

beginning of the world until the date of execution of this Agreement, whether those disputes are presently known or unknown, suspected or unsuspected. Florenco shall, as a condition precedent to the validity of this Agreement, voluntarily dismiss with prejudice his arbitration request pending before James Reynolds, Esq., Florida Seventeenth Judicial Circuit Case Number CACE-15-020353, and Florida Fourth District Court of Appeal Case Number 4D16-1892. Florenco agrees that he will never sue the City or pursue any administrative hearing or remedy before any administrative board or entity, including but not limited to the City of Fort Lauderdale Civil Service Board, or pursue any alternative dispute resolution, concerning any claim that he may have relating to his employment with the City of Fort Lauderdale or his separation from employment with the City of Fort Lauderdale. Florenco's aforementioned pension rights being the sole exclusion to this provision.

The waivers and releases herein contemplated are intended to run in favor of the City, its City Commissioners, managers, officers, attorneys, insurers, employees, and agents of any kind, each of whom shall have an independent right to enforce the terms hereof.

7. Nothing contained herein is intended to waive, reduce or release any future claims for unemployment compensation benefits, nor is anything contained herein intended to waive or release any future claims for health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or any other post-employment benefits to which Employee may be entitled. Nothing herein prohibits Employee from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission (EEOC).

8. **Neutral Reference.** The City of Fort Lauderdale agrees to provide a neutral response to any inquiry regarding Florenco or his employment or conduct while he was employed by the City of Fort Lauderdale, communicating only the dates of his employment, the position or positions in which he was employed, and if requested, final salary. This paragraph does not purport to limit in any way the operation of Chapter 119, Florida Statutes, or other applicable law.

9. **Governing Law and Interpretation.** This Agreement and any dispute arising from it shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. The parties agree that this Agreement and its terms were the product of mutual negotiation between the parties. This Agreement shall be construed according to the plain meaning of its terms and shall not be strictly construed against any party, regardless of the identity of the drafter. The prevailing party in any litigation arising out of this Agreement, following any and all appeals, shall be entitled to reasonable attorneys' fees and costs incurred in that action.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties on the subject matter. In the event that any provision or part of any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions or parts of provisions shall remain in full force and



effect, with the exception that, should all any or part of Paragraph 3 of this Agreement be found invalid or unenforceable, then this entire Agreement shall be null, void, and without legal effect.

11. **Selective Enforcement.** No waiver by either party of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by the other party of the same, or any other provision or the enforcement thereof. Either party's consent to or approval of any act by the other party requiring the other party's consent or approval shall not be deemed to render unnecessary the obtaining of the other party's consent to or approval of any subsequent consent or approval of the other party, whether or not similar to the act so consented to or approved.

12. **Modifications.** No statements, representations, or warranties, either written or oral, from whatever source, not set forth in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities with which this Agreement is executed.

13. **Negotiated Instrument.** The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.


14. Employee has voluntarily executed this Agreement on Employee's own behalf and also on behalf of any heirs, agents, representatives, successors and assigns that Employee may have now or in the future.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set forth below:

ATTEST:



Jeffrey A. Modarelli, City Clerk



Lee R. Feldman
City Manager

CITY OF FORT LAUDERDALE

By: 

John P. "Jack" Seiler, Mayor

Date: December 13, 2016

Approved as to form:

Cynthia A. Everett, City Attorney

By: 

Sr. Assistant City Attorney

MICHAEL FLORENCO

[Signature]

Michael Florenco

STATE OF FLORIDA

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 9th day of Nov, 2016, by Michael Florenco.

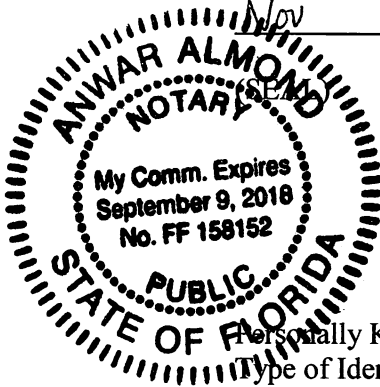
Anwar B Almond

Notary Public, State of Florida

(Signature of Notary Public)

Anwar Almond

(Print, Type, or Stamp Commissioned Name of Notary Public)



pgs. 1-6
[Signature]

Personally Known _____ OR Produced Identification _____

Type of Identification Produced FL Driver License

[Signature]