

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-330

A RESOLUTION ACCEPTING PROPOSED SETTLEMENT AGREEMENT AND GENERAL RELEASE IN CONNECTION WITH AN ACTION INVOLVING TERMINATION FILED BY MARGARET PASS AGAINST THE CITY OF CORAL GABLES.

WHEREAS, said matter was scheduled for consideration before the Trial Board in the fall of calendar year 2009; however, as a consequence of continued settlement negotiations, counsel for Ms. Pass and the City have reached a tentative agreement, wherein the financial terms are as follows: the sum of \$99,000 to be paid to Ms. Pass, over a two year period; more particularly \$50,000 made payable to Ms. Pass fifteen (15) days from the date of approval of this agreement, and the remaining \$49,000 to be paid twelve (12) months from the first payment; further stipulating that all attorney's fees are inclusive of said settlement amount is inclusive of all attorney's fees and costs, and there are no additional cost for expenses beyond the agreed upon \$99,000; and

WHEREAS, the City Labor Counsel recommends that this settlement is in the best interest of the City and recommends that the settlement be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption herein.

SECTION 2. That the City Commission does hereby accept the recommendation of the City's Labor Counsel and hereby approve the above stipulated settlement agreement between Margaret Pass and the City of Coral Gables.

SECTION 3. That this resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS SEVENTEENTH DAY OF NOVEMBER, A.D., 2009.

(Moved: Withers / Seconded: Kerdyk)

(Yeas: Kerdyk, Withers, Anderson)

(Nays: Cabrera, Slesnick)

(Majority: (3-2) Vote)

(Agenda Item: I-1)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JAMES CROSLAND, ESQUIRE
CITY'S LABOR COUNSEL

Bryant Miller Olive

Attorneys at Law
One Biscayne Tower
2 South Biscayne Boulevard
Suite 1480
Miami, FL 33131
Tel 305.374.7349
Fax 305.374.0895
www.bmolaw.com

November 10, 2009

VIA HAND-DELIVERY

Donald Slesnick, II
Mayor
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

William H. Kerdyk, Jr.
Vice-Mayor
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Maria Anderson
Commissioner
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Wayne E. Withers
Commissioner
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Rafael Cabrera, Jr.
Commissioner
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

**Re: City of Coral Gables
Margaret Pass**

Dear Mayor & Commissioners:

Enclosed please find the tentative settlement agreement and general release concerning Margaret Pass. The agreement provides for a complete release of the City, including its former and current commissioners, administrators, department heads, supervisors, attorneys, representatives and officials, in both their official and individual capacities. As the City's labor counsel, it is recommended that the City Commission

Mayor and Commissioners
November 10 2009
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approve the settlement. I will be in attendance at the Commission Meeting on October 27, 2009, should there be any questions.

Very Truly Yours,

BRYANT MILLER OLIVE


James C. Crosland

Enclosure

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between MARGARET PASS ("PASS") and the CITY OF CORAL GABLES, including its related entities and subdivisions, as well as its respective former and current commissioners, directors, administrators, agents, department heads, supervisors, employees, attorneys, representatives, and officials (all in their official and individual capacities), as well as their heirs, executors, administrators, predecessors, successors, insurers, assigns, and all other persons, partnerships, firms or corporations, and their insurers who are related to the City (collectively referred to herein as the "CITY").

WHEREAS, PASS was employed by the CITY as its Building and Zoning Director;

WHEREAS, PASS was terminated from employment in 2007 and filed an appeal pursuant to the City's Trial Board procedures alleging she was terminated without cause;

WHEREAS, PASS has threatened various other legal action against the CITY;

WHEREAS, the CITY denies all allegations made by PASS;

WHEREAS, the parties recognize that resolution of these differences in a manner favorable to their respective interests cannot be reasonably predicted and that litigation to resolve these differences will require the expenditure of significant funds and resources by both parties; and,

WHEREAS, the parties desire to amicably resolve their differences and avoid the expense and uncertainty of legal proceedings.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration set forth herein, PASS and the CITY, intending to be legally bound, agree to the following.

1. **Dismissal With Prejudice.**

PASS has dismissed her appeal filed with the Trial Board with prejudice and has agreed to provide the CITY with the general waiver and release of all claims as set forth in Paragraph 3 of this Agreement.

2. Consideration.

In consideration for the dismissal of PASS' Trial Board appeal, her execution of this Agreement, the general release and waiver of any and all claims against the CITY, and the other promises set forth herein, the CITY agrees to:

A. Pay PASS the sum of ninety-nine thousand dollars (\$99,000.00), minus the appropriate withholdings and deductions. This sum is in settlement of any and all claims and is inclusive of all attorneys' fees and costs. This sum shall be paid as follows:

i. A payment to PASS in the amount of fifty thousand (\$50,000.00) dollars, minus the appropriate withholdings and deductions. This payment will be made within fifteen (15) days of the effective date of this Agreement and will be transmitted by check made payable to MARGARET PASS. The check will be provided to PASS in care of Phillips & Richard, P.A.

ii. A payment to PASS in the amount of forty-nine thousand (\$49,000.00) dollars, minus the appropriate withholdings and deductions. This payment will be made no later than twelve (12) months from the date of the payment referred to in Paragraph 2(a)(i) above, and will be transmitted by check made payable to MARGARET PASS. The check will be provided to PASS in care of Phillips & Richard, P.A.

iii. The payments set forth in Paragraphs 2(a)(i) and (ii) above will be reported to the Internal Revenue Service ("IRS") as follows: fifty percent (50%) of each payment will be reported on a Form W-2 as wages and the other fifty percent (50%) will be reported on Form 1099.

B. The CITY shall withdraw the disciplinary letter dated September 7, 2007, and October 24, 2007, issued by David L. Brown. These letters shall be considered null and void and shall be so documented in PASS' personnel file. The CITY will change PASS' termination to a retirement.

C. The CITY shall place the attached recognition of service in PASS' personnel file. This Settlement Agreement shall be maintained in the Office of the City Attorney.

3. **General Waiver and Release of All Rights and Claims.**

In exchange for the consideration described in this Agreement, PASS hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which she has or may have against the CITY from the beginning of the world until the effective date of this Agreement. The disputes released by PASS include, but are not limited to, any and all disputes against the CITY concerning PASS' employment and separation from employment. The disputes released by PASS include, but are not limited to, those that are actual or contingent, in law, in equity, or otherwise. This release includes all disputes by which PASS could seek equitable relief, and actual, compensatory, consequential, liquidated, punitive, special, multiple or other damages, expenses (including attorneys' fees and costs), and all other reimbursements or charges of any kind. The disputes released by PASS include, but are not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- 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;
- The Older Workers Benefit Protection Act;
- Florida Wage and Hour laws;
- Florida and federal whistle-blower laws, including § 112.3187, Florida Statutes;
- 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;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance; or
- Any public policy, contract, or common law claims, including any tort claims (e.g., negligent or intentional infliction of emotional distress; negligent retention; supervision or training; defamation; assault; battery; false imprisonment; wrongful termination; loss of consortium; etc.) whether based on common law or otherwise.

PASS also agrees and acknowledges that this Agreement is also entered into pursuant to Section 440.20(11)(c)(d) and (e), Florida Statutes, and is intended to be a complete and final settlement of any and all workers' compensation benefits under Chapter 440, Florida Statutes, including, but not limited to, future medical benefits. PASS stipulates that all accidents, injuries, repetitive traumas, exposures, and occupational diseases known to have occurred or been sustained while employed by the CITY have been revealed. PASS agrees that this Agreement includes all accidents, occupational diseases and injuries sustained while employed by the CITY whether reported or not.

PASS acknowledges and agrees that this release and waiver bars any claim or demand for damages, costs, fees, or other expenses, including attorneys' fees, incurred in connection with PASS' employment with the CITY or separation from employment as well as for any of the above-referenced claims. PASS understands and agrees that with respect to the claims being waived in this Agreement, she is waiving not only the right to recover money or other relief in any action that might be instituted, but she is also waiving any right to recover money or any other relief whatsoever in any action that might be brought her behalf by any other person or entity, including but not limited to, the United

States Equal Employment Opportunity Commission, the Florida Commission on Human Relations, or any other federal, state or local government agency or department.

PASS understands that the foregoing list of causes of action which have been waived is meant to be illustrative rather than all-inclusive, and understands and acknowledges that she is waiving and releasing the CITY from any and all causes of action of any nature whatsoever. It is PASS' intention to fully, finally and forever resolve and release any and all disputes that she has, may have or believes herself to have with respect to any alleged acts occurring before the effective date of this Agreement, whether those disputes are presently known or unknown, suspected or unsuspected. In this regard, PASS further acknowledges that she may later discover additional facts or facts that are different from those which she now knows to be true with respect to the subject matter of this Agreement and agrees that any such difference in the facts shall not affect this Agreement; that she assumes the risk of any such difference in the facts; and that she further agrees that this Agreement shall remain in full force and effect and not be subject to rescission by reason of any such difference in the facts. This release does not waive any rights or claims arising after the signing of this Agreement.

4. **No Pending Lawsuits, Claims or Charges and Covenant Not to Sue.**

PASS represents and agrees that she will not hereafter pursue, initiate, or cause to be instituted against the CITY any dispute released herein. PASS further represents that she does not currently have pending before any court or before any federal, state or local agency any dispute of any kind against the CITY, including her appeal to the City's Trial Board. If it is determined that PASS has any other lawsuit, charge of discrimination, or other claim pending against the CITY, she agrees to dismiss any such claims, with prejudice, immediately upon determining that such charge or claim is pending.

5. **Confidentiality, Non-Disparagement, and Response to the Media.**

Except as required by law or the Court, PASS agrees not to disclose or discuss this Agreement, the circumstances relating thereto, or any of the claims or allegations giving rise to this Agreement, with any persons except her attorneys, accountants, tax advisors, or spouse or to comply with the requirements of the law or court order. If PASS discusses this Agreement with her attorneys,

accountants, tax advisors, or spouse, it shall be her duty to direct them not to discuss the terms of this Agreement with any other person. PASS understands and agrees that under Florida's public records laws, the CITY is required to, and shall upon request by a third party, disclose this Agreement, and the CITY shall comply with all federal, state and local laws requiring disclosure of public records.

PASS and the elected and appointed officials of the CITY (i.e., members of the Commission, City Manager, City Attorney and City Clerk) agree that they will not make any adverse, derogatory or disparaging comments or statements, orally or in writing, direct or indirect, about or against one another.

All media inquiries, whether solicited or unsolicited, regarding this Agreement shall be directed to the City Attorney's office. If the City Attorney's office, is asked about the resolution of PASS' appeal to the City's Trial Board or this Agreement, the City Attorney's office is authorized only to say, "The parties resolved the matter to their mutual satisfaction." If PASS is asked about the resolution of PASS' appeal to the City's Trial Board or this Agreement, she is authorized only to say, "The parties resolved the matter to their mutual satisfaction."

6. **No Re-Employment.**

PASS agrees that she will not apply or re-apply for employment in the future with the CITY. She further agrees that the CITY has no obligation, contractual or otherwise, to hire or employ her in the future.

7. **Neutral Reference.**

Any inquiry from a prospective employer of PASS shall be directed to the City Attorney's office. The City Attorney's office will provide a neutral reference regarding PASS' employment by stating that it is the City's policy to provide a neutral reference which includes information regarding the positions held and the length of time in such positions. The City Attorney's office may also inform prospective employers that most of the information contained in PASS' personnel file is public record and, thus, may be reviewed and/or requested.

8. **Consideration.**

The parties agree and acknowledge that the actions set forth in Paragraph 2 of this Agreement constitute good, valuable and sufficient consideration for PASS' dismissal of her appeal to the City's Trial Board, her full waiver and release of all claims against the CITY, and her fulfilling all other promises as set forth herein. PASS acknowledges that without this Agreement she would not otherwise be entitled to the consideration she is receiving pursuant to this Agreement.

9. **Consequences of Breach.**

PASS agrees that if she breaches any of the promises set forth in this Agreement, PASS will be deemed to have forfeited any and all consideration given to her under this Agreement by the CITY, and the CITY may seek reimbursement of all monetary consideration provided to PASS including any amounts provided to her attorney on her behalf. Further, if PASS institutes a lawsuit or other action, or causes a lawsuit or other action to be instituted against the CITY (other than for enforcement of this Agreement), she will be in violation of this Agreement and will forfeit all monetary consideration. Should the CITY breach this Agreement, PASS shall have the right to reinstate her appeal through the Trial Board and may institute any and all legal claims available to her. In such case, the CITY may not raise any limitation period that may have elapsed because of PASS' reliance on this Agreement.

10. **Indemnity.**

PASS acknowledges that all costs and/or attorneys' fees liens, workers' compensation liens, and all medical liens and bills for medical, hospital, ambulance and/or nursing care, treatment, diagnosis, or examination of PASS arising out of or related to the claims asserted in, or that could have been asserted in connection with PASS' appeal have or will be paid in full by PASS, except as explicitly set forth in this Agreement. PASS agrees to this indemnity provision for the purpose of inducing the CITY to settle her appeal to the Trial Board and in consideration for the funds paid as set forth in this Agreement. PASS agrees to indemnify and hold the CITY harmless of and from any and all bills, sums, amounts, debts, liens, demands, claims, promises, damages, judgments, and executions in law or in equity, for attorneys' fees and/or costs, medical, hospital, ambulance and/or nursing care, treatment,

diagnosis or examination arising out of or related to her appeal to the Trial Board, or any other allegation that was made or could have been made by PASS. This provision shall not preclude the payment of any claims submitted to the CITY sponsored health insurance plan, if applicable.

11. **Tax Consequences of Settlement.**

PASS understands and agrees that should the IRS, or any other taxing authority or other federal, state, or local agency assert, argue, or determine that any money received or paid pursuant to this Agreement that was not subject to withholding and/or deductions, is taxable wages, income, or benefits of any kind, PASS will be solely and individually responsible for the payment of any and all taxes, contributions, withholdings, or deductions. PASS' responsibility for such taxes, withholding, contribution and/or deduction includes, but not limited to, the amount of the tax, withholding, contribution and/or deduction as well as any and all penalties, interest, fees, fines, attorneys' fees and costs, related to the amount of taxes, withholding, contribution and/or deduction that should have been paid by PASS. PASS further agrees that she will indemnify, reimburse, and hold the CITY harmless for any and all taxes, contributions, withholdings, deductions, fees, attorneys' fees and costs, interest and/or penalties related to the amount of taxes, withholding, contribution and/or deduction attributable to what should have been paid by PASS.

12. **Encouragement to Consult Attorney, Time to Consider Agreement, and Revocation Period.**

A. PASS acknowledges that she was encouraged by the CITY to consult with an attorney regarding the terms of this Agreement and that she did, in fact, consult with an attorney. PASS also acknowledges that before she signed this Agreement, she reviewed this Agreement, had a reasonable time to consider this agreement, discussed it with her attorney, and fully understands the legal effect of this Agreement as well as her rights and obligations under this Agreement.

B. Time to Consider Signing Agreement. PASS acknowledges that she has been given a reasonable period of time of not less than twenty-one (21) days within which to decide

whether to sign this Agreement. PASS understands and agrees that she can use all or any part of this period to decide whether to sign this Agreement. PASS agrees that any changes to this Agreement from that originally presented to PASS will not restart the twenty-one (21) day consideration period.

C. **Seven (7) Day Period to Revoke.** PASS understands that she may revoke this Agreement within seven (7) calendar days after she signs the Agreement.¹ If PASS revokes the Agreement, the Agreement will be deemed unenforceable, will be null and void, and the CITY shall be relieved of all obligations stated in this Agreement. To be an effective revocation, any revocation must be in writing, executed by PASS and delivered to James C. Crosland, Esquire, at the law firm of Bryant Miller Olive, Suite 1480, One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida 33131, on or before the seventh calendar day by or before 5:00 p.m. (Eastern Time). The revocation must expressly state "I hereby revoke the Agreement."

13. **Effective Date.**

This Agreement will become effective upon the execution of this Agreement by all parties and expiration of the revocation period.

14. **Non-Admission of Wrongdoing.**

The parties agree that neither this Agreement nor the furnishing of any consideration under this Agreement shall be construed as an admission by any party of any wrongdoing, liability or unlawful conduct. In fact, PASS specifically denies any wrongdoing or that her termination was warranted. The CITY denies any wrongdoing or that it is liable in any way to PASS.

15. **Action for Breach of Agreement.**

The parties agree that if any litigation arises regarding a breach and/or the interpretation or enforcement of this Agreement, such litigation shall be in Miami-Dade County, Florida. The parties

¹ For purposes of computing this seven (7) day period, the date PASS signs the Agreement should not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period of time prescribed runs until the end of the next day which is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

further agree that the prevailing party in any such litigation will be entitled to recover all costs and attorneys' fees incurred in such litigation.

16. **Governing Law and Severability.**

This Agreement shall be governed 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. However, should Paragraph 3 General Waiver and Release of All Rights and Claims be declared illegal or unenforceable, then this Agreement shall be declared null and void and any monies provided to PASS, including any attorneys' fees provided on her behalf, will be immediately returned to the CITY by PASS. 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.

17. **Entire Agreement.**

This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the parties, except as otherwise specified in this Agreement. PASS acknowledges that she has not relied on any representations, promises, or agreements of any kind made to her in connection with her decision to sign this Agreement except for those set forth in this Agreement.

18. **Amendment.**

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

19. **Headings.**

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

20. **Acknowledgement.**

PASS acknowledges that she has carefully read and understands this Agreement consisting of eleven (11) pages and one (1) attachment and agrees that the CITY has not made any representations

other than those contained herein. PASS also acknowledges that she enters into this Agreement voluntarily, without any pressure or coercion and with full knowledge of its significance, and this Agreement constitutes a full and absolute settlement and bar as to any and all claims she had, has, or may have against the CITY.

PASS ACKNOWLEDGES THAT SHE HAS READ THIS AGREEMENT, FULLY UNDERSTANDS THIS AGREEMENT, AND IS DESIROUS OF ENTERING INTO THIS AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE CITY AND PASS. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THE BENEFITS SET FORTH ABOVE, PASS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLE ALL CLAIMS SHE HAS OR MIGHT HAVE AGAINST THE CITY FROM THE BEGINNING OF TIME UNTIL THE EFFECTIVE DATE OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below.

MARGARET PASS

CITY OF CORAL GABLES

By: _____

By: _____

Elizabeth M. Hernandez, Esquire
City Attorney, City of Coral Gables

Date: _____

Date: _____

Approved As to Form By:

Approved As to Form By:

Kathleen M. Phillips, Esquire

James C. Crosland, Esquire
Labor & Employment Counsel to the City

RECOGNITION OF SERVICE

WHEREAS, Margaret Pass was employed continuously by City of Coral Gables ("City") since she was first hired in 1984 in the Public Works Department where she quickly moved to the Building and Zoning Department until 2007 when she retired after reaching the top of the Department as Director;

WHEREAS, during her term she was appointed to the Building Code Administrators and Inspectors Board by Governor Lawton Chiles, based on her qualifications and interest in good government; and

WHEREAS, during her term she was reappointed to the Florida Building Code Administrators and Inspectors Board by Governor Jeb Bush who recognized her service to the State of Florida as well as to the City; and

WHEREAS, during her term she was reappointed to the Florida Building Code Administrators and Inspectors Board by Governor Charlie Crist who recognized her service to the State of Florida as well as to the City; and

WHEREAS, during her term, she lead the department so that the City became the second U.S. City to receive a "Class 1" rating for enforcing the Commercial and Residential Building Codes; and

WHEREAS, the Building and Zoning Department received the highest numerical rating ever obtained as a "Class 1 Department" by any city or county in the nation from the Insurance Services Office (ISO), the national firm that evaluates municipalities, demonstrating an ability to enforce effective building codes, thus ultimately reducing the exposure risks to catastrophic events. This evaluation was key to having lower insurance rates for homeowners and businesses of the City and as recognized by the Commission of Insurance Regulation in the State of Florida; and

WHEREAS, this achievement is a testament to the dedication, commitment and service of each and every employee in the Building and Zoning Department in making this achievement possible, and

WHEREAS, Margaret Pass admirably served the citizens of the City as Director of Building and Zoning by working in partnership with fellow employees and with the officials of the City;

The City hereby recognizes that the services of Margaret Pass were an asset to the citizens of the City.