

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 11, 2008

☐ Consent
☐ Ordinance☒ Regular
☐ Public HearingDepartment: PUBLIC SAFETY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to: Approve a Settlement Agreement, Waiver and General Release, inclusive of attorney's fees and costs, in the total amount of \$56,000, to settle the claims of former County employee Howard H. Eisenman, (Employee Grievance Nos. 2007-06-2073, 2007-04-2068, and 2006-12-2056).

Summary: Howard H. Eisenman is a former County employee who was employed as a Communicator in the Public Safety Department. On June 18, 2007, Mr. Eisenman was terminated from County employment for failing to perform his assigned duties. Mr. Eisenman filed a grievance of his termination. Under the terms of the settlement, Mr. Eisenman will withdraw all pending grievances, tender his resignation, and provide the County with a general release. Staff, including Administration, the Human Resources Department and the Public Safety Department, concurs that this settlement is in the best interest of Palm Beach County. Countywide (EC)

Background and Justification: Howard Eisenman was hired by the County on November 4, 1989. The Public Safety Department discharged Howard Eisenman on June 18, 2007, for failing to perform his assigned duties as a Communicator. Mr. Eisenman filed a grievance of his termination under the labor-management agreement, whereupon the Human Resources Department conducted a thorough investigation that uncovered certain additional facts and circumstances unknown at the time of discharge. Based on this additional information, it was determined that the County's interests would be best served by negotiating a settlement agreement with Mr. Eisenman and avoiding the uncertainty and expense of arbitration. The settlement further provides that Mr. Eisenman will withdraw all pending grievances, tender his resignation from County employment, and provide the County with a general release.

Attachments: 1. Settlement Agreement, Waiver and General Release, with Exhibits.

Approved by: _____

Department Director

3/10/08
Date

SETTLEMENT AGREEMENT, WAIVER AND GENERAL RELEASE**THIS SETTLEMENT AGREEMENT, WAIVER AND GENERAL RELEASE**

(hereinafter referred to as "Agreement"), dated this _____ day of March, 2008, is entered into by and between Howard H. Eisenman (hereinafter referred to as "EISENMAN"), an individual, whose last known address is 11686 Dahlia Drive, Royal Palm Beach, Florida, 33411, and Palm Beach County, a political subdivision of the State of Florida, whose offices are located at 301 North Olive Avenue, West Palm Beach, Florida, (hereinafter "COUNTY").

WHEREAS, EISENMAN had been employed by the COUNTY as a Communicator in the Animal Care and Control Division of the Public Safety Department until he was terminated from employment on June 18, 2007; and

WHEREAS, EISENMAN filed a grievance regarding his termination from COUNTY employment, as well as grievances for two previous ten-day suspensions from COUNTY employment, all of which have been referred to arbitration; and

WHEREAS, EISENMAN and the COUNTY want to amicably settle and resolve any and all claims, disputes and differences now pending or that may arise from EISENMAN's employment with the COUNTY without resorting to further arbitration or litigation; and

WHEREAS, EISENMAN and the COUNTY desire to enter into this Agreement, without establishing practice or precedent, the terms of which Agreement releases and waives any and all claims that EISENMAN had, now has or could have against COUNTY, in exchange for the benefits and consideration described herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and for such other good and valuable consideration, the receipt and sufficiency of which the parties hereto expressly acknowledge, the parties, intending to be legally bound, agree as follows:

1. EISENMAN and COUNTY acknowledge that all of the above statements are true and correct.

2. In exchange for EISENMAN's execution of this Settlement Agreement, Waiver and General Release, and EISENMAN's satisfaction and fulfillment of all terms, conditions, consideration and mutual promises set forth herein, and without establishing practice or precedent, the COUNTY agrees to do the following:

- A. COUNTY shall pay EISENMAN the sum of **FIFTY-SIX THOUSAND AND NO/100 DOLLARS (\$56,000.00)**;
- B. COUNTY shall designate and note wherever appropriate in its records that EISENMAN is eligible for COUNTY rehire without restriction;
- C. COUNTY shall note in EISENMAN's personnel file that EISENMAN voluntarily resigned from COUNTY employment effective June 18, 2007;
- D. COUNTY shall grant and award, without pay, the grievances EISENMAN filed for two previous ten-day suspensions (Grievance No. 2007-04-2068, for a ten-day suspension issued March 23, 2007, and Grievance No. 2006-12-2056, for a ten-day suspension issued November 28, 2006);
- E. EISENMAN's personnel file will not reflect that EISENMAN received the two ten-day suspensions issued March 23, 2007, and November 28, 2006, nor that EISENMAN was terminated from employment effective June 18, 2007.

3. In exchange for the COUNTY's execution of this Settlement Agreement, Waiver and General Release, and the COUNTY's satisfaction and fulfillment of all terms, conditions, consideration and mutual promises set forth herein, EISENMAN agrees to do the following:

A. EISENMAN shall rescind and withdraw, with prejudice, all pending grievances, specifically including but not limited to the following:

I. Grievance No. 2006-12-2056, for ten-day suspension issued November 28, 2006;

II. Grievance No. 2007-04-2068, for ten-day suspension issued March 23, 2007; and

III. Grievance No. 2007-06-2073, for termination effective June 18, 2007;

and

B. EISENMAN shall resign his employment with the COUNTY effective June 18, 2007, and tender a signed letter of resignation indicating such immediately prior to execution of this Agreement, a copy of which letter shall be attached hereto as Exhibit A;

4. EISENMAN understands and acknowledges that he would not receive the benefits and consideration provided pursuant to Paragraph 2 above, unless he executes this Settlement Agreement, Waiver and General Release of claims against the COUNTY, and fulfills the promises contained herein.

5. EISENMAN agrees that the benefits and consideration provided pursuant to Paragraph 2 above constitutes full, final and complete consideration for the rights and potential claims he is waiving under this Agreement, and for the waiver, release, and other obligations imposed upon him

by virtue of this Agreement.

6. For and in consideration of the benefits and consideration provided herein, that EISENMAN hereby acknowledges constitutes full, final and total consideration and satisfaction for any and all claims, EISENMAN, his heirs, successors, and assigns, to the extent permitted by law, knowingly and voluntarily waive, release, acquit, satisfy, and forever discharge the COUNTY and each and every one of the COUNTY's current and former commissioners, officials and officers, directors, agents, administrators, attorneys, and employees, in both their official and individual capacities, and their successors and assigns, from any and all known and unknown rights, claims and causes of action to recover damages, compensation or any consideration whatsoever, which EISENMAN had, now has, or may have arising out his employment with COUNTY, from the beginning of the world up to and including the date of this Agreement, including but not limited to any claim or claims arising under any of the following:

The Public Employees Relations Act;

The Florida Civil Rights Act of 1992;

Title VII of the Civil Rights Act of 1964;

The Civil Rights Act of 1991;

Sections 1981 through 1988 of Title 42 of the United States Code;

The Immigration Reform and Control Act of 1986;

The Americans with Disabilities Act of 1990;

The Equal Pay Act of 1963;

The Occupational Safety and Health Act;

Constitution of the United States of America;

Constitution of the State of Florida;

Florida Statute §440.205, as amended, pertaining to any claim alleging adverse or retaliatory employment action due to a valid claim under Workers' Compensation Law;

Any other federal, state or local civil or human rights law or any other federal, state or local law, regulation, resolution or ordinance; and

Any public policy, contract, or common law claims, including any tort claims (e.g., negligent or intentional infliction of emotional distress, defamation, assault, battery, false imprisonment, wrongful termination, etc.) whether based on common law or otherwise, as they may be amended from time to time.

This waiver and release also bars any claim or demand for costs, fees, or other expenses including attorney's fees incurred in connection with any of the above-referenced claims. The listing of claims waived in this paragraph is intended to be illustrative rather than exhaustive.

Thus, to the extent permitted by law, EISENMAN acknowledges and agrees that this Agreement constitutes a full and final bar to any and all rights, claims and causes of action to recover damages, compensation or any consideration whatsoever, including his attorney's fees and cost, that he had, now has, or may have against the COUNTY and each and every one of the COUNTY's current and former commissioners, officials and officers, directors, agents, administrators, attorneys, and employees, in both their official and individual capacities, and their successors and assigns, related to or arising out of his employment with the COUNTY, from the beginning of the world up to and including the date of this Agreement. EISENMAN further acknowledges and agrees that the benefits and consideration set forth herein constitutes full, final and total satisfaction of any and all rights, claims and causes of action set

forth in this waiver and general release.

7. EISENMAN agrees that, with respect to the claims he is waiving herein, he is waiving not only his right to recover money or other relief in any action that he might institute, but also that he is waiving his right to recover money or other relief in any action that might be brought on his behalf by any other person or entity, including but not limited to the United States Equal Employment Opportunity Commission or any other federal, state or local governmental agency or department.

8. EISENMAN agrees that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission of any liability or unlawful conduct of any kind by the COUNTY and each and every one of the COUNTY's current and former commissioners, officials, officers, directors, agents, administrators, attorneys, and employees, in both their official and individual capacities, and their successors and assigns.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Its language shall be construed as a whole, according to its fair meaning, and not strictly for or against either party.

10. This Agreement sets forth the entire agreement between COUNTY and EISENMAN, and shall supersede any and all prior agreements or understandings between the parties. It may not be amended except by a written agreement signed by the parties hereto or their respective administrators, trustees, personal representatives, and successors.

11. In the event that either COUNTY or EISENMAN institutes legal proceedings for breach of the terms of this Agreement, it is stipulated and agreed that such a claim shall be heard and determined by the court, not by a jury, in Palm Beach County, Florida. Furthermore, each party shall

bear their own costs, fees, or other expenses including attorney's fees incurred in connection with any such claim.

12. EISENMAN acknowledges that, before executing this Agreement, he has carefully read and fully understands its terms, including the general waiver and release and waiver. EISENMAN further acknowledges that the COUNTY has advised him to obtain counsel from an attorney of his choosing before signing this agreement. EISENMAN further acknowledges that he has had sufficient time and opportunity to carefully review and consider this Agreement, to consult with an attorney of his choosing regarding this matter, and to carefully review the contents of this Settlement Agreement, Waiver and General Release with his attorney, and that he fully understands all of its provisions.

THE PARTIES HAVE READ, UNDERSTOOD AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN EISENMAN AND COUNTY. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE BENEFITS CONSIDERATION SET FORTH HEREIN, EISENMAN FREELY AND KNOWINGLY AND AFTER DUE CONSIDERATION ENTERS INTO THIS RESIGNATION AGREEMENT, WAIVER AND GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS AGAINST THE COUNTY AS SPECIFICALLY SET FORTH HEREIN.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement, Waiver, and General Release as of the date set forth above.

WITNESS:

HOWARD H. EISENMAN


(Signature)

RICHARD R. POULETTY
(Print Name)

By: 
Howard H. Eisenman


ATTEST:
Sharon R. Bock, Clerk & Comptroller,
Palm Beach County

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida

By: _____

By: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

MAR-07-2008 10:31

PALM BEACH ADMINISTRATION

P.10/10

Exhibit A

Resignation Letter

Exhibit A

TO: Palm Beach County, Public Safety

FROM: Howard Eisenman

RE: Resignation from Palm Beach County

This letter is to advise you that I am resigning my position from Palm Beach County Effective June 18, 2007 for personal reasons. Please consider this my two week notice. I have enjoyed my 18 years employment with Palm Beach County.

This resignation is contingent on the Palm Beach County, Board of County Commissioners approval of the Settlement Agreement dated March, 2008.


Howard Eisenman