

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: July 2, 2013

Consent       Regular  
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: PALM TRAN, INC.

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Settlement Agreement in Gayle Heike v. Palm Tran, Inc., Case No.: 502011CA002419XXXMB AF (Fifteenth Judicial Circuit Court) for \$83,000, inclusive of attorney's fees and costs.

**Summary:** Plaintiff Gayle Heike sued Palm Tran, Inc., alleging three claims under the Florida Civil Rights Act, including gender discrimination, retaliation, and hostile work environment. The parties have drafted a proposed settlement agreement which would settle Ms. Heike's claims in the amount of \$83,000, inclusive of attorney's fees and costs. Staff believes Ms. Heike's termination was proper and justified; however, the timing of actions taken against Ms. Heike, when compared to the timing of Ms. Heike's initial gender discrimination claim, along with additional evidence elicited during discovery, could lead a jury to infer that actions taken against Ms. Heike were related to her initial claim, and thus were retaliatory in nature. Staff, including Risk Management and Palm Tran, recommends that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Ms. Heike, in order to limit the County's exposure in this case. Countywide (HCH)

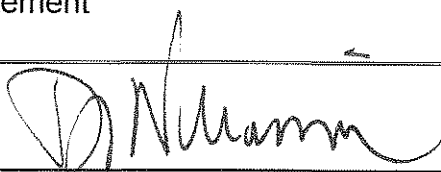
**Background and Justification:** Gayle Heike was employed by Palm Tran as a Financial Analyst II in April of 2002, and was terminated from that position in April 2010. In June 2010, Ms. Heike filed a formal charge of employment discrimination with the Florida Commission on Human Rights. In February 2011, she filed a lawsuit against Palm Tran alleging claims of gender discrimination and retaliation, and in June 2011, she amended her complaint to add a hostile work environment claim. Ms. Heike's claims were filed under the Florida Civil Rights Act, pursuant to which the County's exposure is limited to \$200,000, inclusive of attorney's fees and costs. Staff believes the termination was proper and justified; however, the chronology of events, along with additional evidence elicited during discovery, could lead a jury to infer that actions taken against Ms. Heike were related to her initial gender discrimination claim, and thus were retaliatory in nature. Staff, including Risk Management and Palm Tran, recommend that the Board of County Commissioners approve this Settlement as a reasonable compromise of the claims brought by Ms. Heike, in order to limit the County's exposure in this case.

**Attachments:**

- 1. Settlement Agreement and Release of All Claims
- 2. Budget Availability Statement

Recommended by: \_\_\_\_\_

County Attorney



Date

6/24/13

Approved by: \_\_\_\_\_

N/A

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$83,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 <u>\$83,000</u>	 _____	 _____	 _____	 _____
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget?                      Yes X    No \_\_\_\_\_

Budget Account No.:      Fund 5010 Department 700 Unit 7130 Object 4511

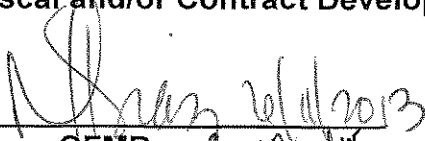
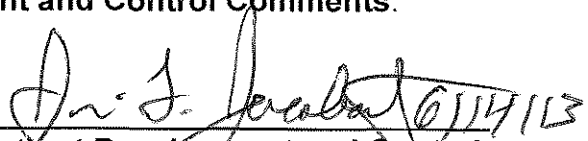
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review: \_\_\_\_\_**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 _____ OFMB	 _____ Contract Development and Control
2/11/2013 6/11/13 6/14/13	6-14-13

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** made and entered into this 12<sup>th</sup> day of June, 2013, by and between PALM TRAN, INC., a not for profit corporation acting as an instrumentality of PALM BEACH COUNTY (the COUNTY), and GAYLE HEIKE.

WHEREAS, GAYLE HEIKE sued PALM TRAN, INC. in a lawsuit presently styled Gayle Heike v. Palm Tran, Inc., Case No. 502011CA002419XXXXMB AF, in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida (the "Pending Lawsuit"); and

WHEREAS, PALM TRAN, INC. has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, GAYLE HEIKE and PALM TRAN, INC. have agreed to settle the Pending Lawsuit, as well as any and all other claims GAYLE HEIKE has against PALM TRAN, INC. arising out of, relating or pertaining to the Pending Lawsuit, or which could have, and should have, been raised in the Pending Lawsuit;

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. This AGREEMENT is subject to the review and approval of the Palm Beach County Board of County Commissioners.
3. Within a reasonable time, GAYLE HEIKE, shall execute and deliver to the Palm Beach County Attorney's Office a Release of All Claims, attached hereto as Exhibit A, and a Stipulation and Final Order of Dismissal with Prejudice, attached hereto as Exhibit B.
4. Within a reasonable time of full execution of the AGREEMENT, the Release of All Claims, and the Stipulation and Final Order of Dismissal with Prejudice, and subject to the review and approval of the Palm Beach County Board of County Commissioners, PALM TRAN, INC. shall pay to GAYLE HEIKE the amount of EIGHTY THREE THOUSAND DOLLARS AND NO CENTS (**\$83,000.00**), by a check made payable to GAYLE HEIKE and GARCIA LAW FIRM, TRUST ACCOUNT.
5. GARCIA LAW FIRM, P.A. shall not disburse, and GAYLE HEIKE shall not accept any proceeds from the settlement check described in paragraph 4 unless and until the Release of All Claims has been delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been filed and served in accordance with paragraphs 3 and 4 above .
6. Each party shall bear its respective attorneys fees and costs.
7. This Settlement Agreement does not constitute an admission of liability by any party.

8. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

9. GAYLE HEIKE and PALM TRAN, INC. hereby declare and represent to each other that GAYLE HEIKE and PALM TRAN, INC. have relied wholly upon their own judgment, and judgment of their agents in entering into this AGREEMENT, and they further represent that they have not been influenced to any extent whatsoever in entering into this AGREEMENT by any representations or statements regarding the value of their respective claims, or the legal liability therefore, or regarding any other matters made by the other party or by any person or persons representing or employed by such other party. Each party further represents to the other that each party giving a release herein set forth knows, has examined, and has investigated to their full satisfaction all matters concerning the incidents and claims between or among them or at issue in the LAWSUIT, and that the settlement of their differences and the execution of this AGREEMENT is not based upon, or induced by, any representations made by the other party, their respective counsel, or by any person or persons representing or employed by such other party concerning the subject matter of the LAWSUIT.

10. GAYLE HEIKE does hereby demise, acquit, satisfy and forever discharge PALM TRAN, INC. and PALM BEACH COUNTY, including any and all of PALM TRAN INC.'s and PALM BEACH COUNTY's, respective agents, employees, affiliates, members, heirs, legal representatives and assigns, jointly and severally, of and from all action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which GAYLE HEIKE ever had, now has, or which any personal representative, successor, heir or assign of GAYLE HEIKE had, hereafter can, shall or may have, against the PALM TRAN, INC. for any and all manner of actions, claims, cause or causes of action or damages arising out of, relating or pertaining to the Pending Lawsuit, or which should have or could have been raised or asserted in the Pending Lawsuit.

11. GAYLE HEIKE agrees to pay and resolve any and all medical bills and/or health insurance and/or third party liens from the proceeds of the settlement.

12. Each party to this AGREEMENT hereby declares and represents to each other party to this AGREEMENT that no promise or agreement not herein expressed has been made to the other; that this AGREEMENT contains the entire agreement between GAYLE HEIKE and PALM TRAN, INC. and that the terms of the AGREEMENT are contractual and not a mere recital; and that this AGREEMENT may only be modified by a subsequent written agreement executed by all parties.

13. GAYLE HEIKE and PALM TRAN, INC. hereby declare to one another that they have carefully read the foregoing AGREEMENT, that the contents have been explained to them by their respective attorneys, that they understand the contents thereof, and that they have signed this AGREEMENT voluntarily and of their own free will.


JMG gr

14. Whenever and wherever the context of this AGREEMENT requires, any references to the singular shall read, construed, and interpreted to mean the plural and vice-versa; any reference to the masculine gender shall be read, construed, and interpreted to mean the feminine gender and vice-versa; any reference to the natural gender shall be read, construed, and interpreted to mean the masculine or feminine gender, whichever is applicable.

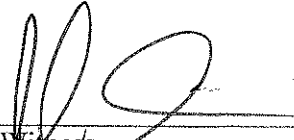
15. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

**IN WITNESS HEREOF:**

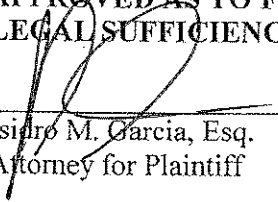
**GAYLE HEIKE**

  
\_\_\_\_\_  
Gayle Heike, Plaintiff

6/12/13  
Date

  
\_\_\_\_\_  
Witness

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

  
\_\_\_\_\_  
Isidro M. Garcia, Esq.  
Attorney for Plaintiff

6/14/13  
Date


**PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

By: Steven L. Abrams, Mayor  
Board of County Commissioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

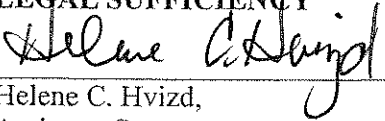
**PALM TRAN, INC.**

  
\_\_\_\_\_  
By: Chuck Cohen, Director

6/18/13  
Date

\_\_\_\_\_  
Witness

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

  
\_\_\_\_\_  
Helene C. Hvizd,  
Assistant County Attorney,  
Palm Beach County, Florida

6/24/13  
Date

RELEASE OF ALL CLAIMS

**KNOW ALL MEN BY THESE PRESENTS:**

That the Undersigned, **GAYLE HEIKE**, being of lawful age, for the sole consideration of **EIGHTY THREE THOUSAND DOLLARS AND NO CENTS (\$83,000.00)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her executors, administrators, successors and assigns, release, acquit and forever discharge **PALM TRAN, INC. and PALM BEACH COUNTY** (hereinafter referred to as "the Releasees"), and their officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the Undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the Undersigned may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, reputational damages, and property damages, and any and all consequences thereof, resulting or to result from the Undersigned's allegations of gender discrimination, retaliation, and exposure to hostile work environment in Gayle Heike v. Palm Tran, Inc., Case No. 502011CA002419XXXXMB AF, in the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida.

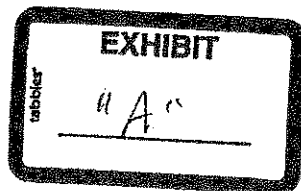
FURTHERMORE, the Undersigned hereby specifically declares and represents that this settlement discharges Releasees from any claim, demand, rights, damages, costs, loss of service, expenses, compensation, loss of benefits, actions, causes of action, or suit of any kind or nature whatsoever, based on any claim of a violation of her civil rights or federal or state constitutional rights, or based on a claim of discrimination, retaliation or hostile work environment arising from any event, instance, or occurrence prior to the date of this Release, regardless of the basis or theory of the claim, and regardless of whether or not those alleged instances of civil or constitutional rights violations, discrimination, retaliation or exposure to a hostile work environment were expressly mentioned in the above-styled lawsuit or in any prior complaint to the Equal Employment Opportunity Commission ("EEOC").

FURTHERMORE, the Undersigned agrees that each party shall bear its own costs and attorney's fees.

FURTHERMORE, the Undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the Releasees, and that the Releasees deny any liability and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the undersigned acknowledges that she is responsible for any and all tax implications arising from the payment made under this Settlement.

THE UNDERSIGNED hereby declares that the Undersigned has completely read, fully understood, and voluntarily accepted the foregoing Release of All Claims for the purpose of making a full and final compromise settlement and adjustment of any and all claims disputed or otherwise on account of the injuries and damages set forth above, and for the express purpose of precluding forever any further or additional claims against the Releasees arising out of the aforementioned incident.

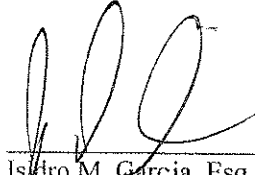


*gr*

STATEMENT OF ATTORNEY FOR RELEASOR

I, Isidro M. Garcia, Esq., of the Garcia Law Firm, P.A., state that I am the attorney for Gayle Heike, the above-signed Releasor, that I have explained to Gayle Heike all the terms of this Release and the Settlement Agreement upon which it is based and that Gayle Heike has represented to me that she understands all those terms and their significance. Gayle Heike has signed this Release knowingly, voluntarily, and on my advice.

Dated 6/12/13

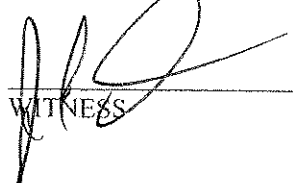


\_\_\_\_\_  
Isidro M. Garcia, Esq.  
Attorney for Gayle Heike  
Florida Bar No. 437883

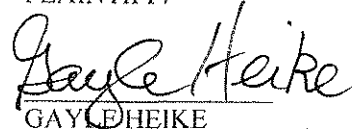
THE UNDERSIGNED hereby accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS WHEREOF, I, GAYLE HEIKE, have hereunto set my hand and seal this 12<sup>th</sup> day of June, 2013.

IN THE PRESENCE OF:

  
WITNESS

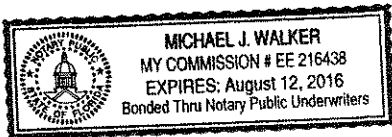
PLAINTIFF:

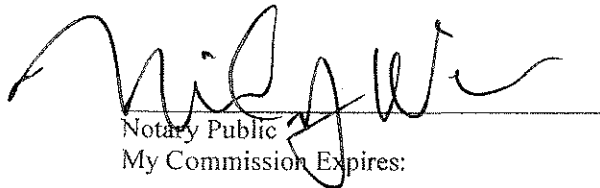
  
GAYLE HEIKE

STATE OF FLORIDA            )  
COUNTY OF PALM BEACH    )

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this 12<sup>th</sup> day of June, 2013, by Gayle Heike, who [ ] is personally known to me; OR  has produced F.I.A.D./L identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]



  
Notary Public  
My Commission Expires:



BUDGET AVAILABILITY STATEMENT  
RISK MANAGEMENT

REQUEST DATE: 6/5/13 REQUESTED BY: County Attorney's Office

REQUESTED FOR: Gayle Heike Claim #000103-009026-EO-01

REQUESTED AMOUNT: \$83,000 AGENDA DATE: 7/2/13

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY: Jessica Kolb DATE: 6/5/13  
Jessica Kolb