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Memorandum

TO: Mayor & Commissioners

FROM: Shawn D. Smith, City Attorney

RE: Mathew Klosowski v. City of Key West
Case No. 2007-CA-1642-K

DATE: September 16, 2014

Mayor and Commissioners,

I'm asking that settlement of this time-sensitive matter be added to your agenda this evening. We were set to retry this case on Monday. While I spent the last couple of weeks intensely preparing for trial, I have also been meeting with Plaintiff's counsel and separately with our insurance company regarding settlement. On Friday afternoon we reached a tentative agreement on a settlement figure and have been working to come up with language acceptable to all parties concerning the settlement documents. The participation by our insurer brought about by discussions last week makes the settlement possible. Our insurer will pay approximately 67% of the proposed settlement amount. Subject to your approval, Plaintiff will be paid \$287,500 in full settlement of all claims. Roughly \$96,000 of this will be paid by the City with the remaining \$191,500 coming from our insurer. Our insurer is satisfied with the result and supports settlement recognizing the potential exposure.

Summary

Plaintiff Matthew Klosowski was employed as a police officer for the Key West Police Department (KWPD) beginning July 19, 2004. He made allegations of harassment and retaliation against the department and filed his whistleblower lawsuit against the City of Key West on December 7, 2007. He subsequently resigned on March 4, 2008 and amended his complaint to claim a constructive termination along with additional allegations.

Plaintiff alleges retaliation from his supervisors and other members of KWPD. Plaintiff was involved in a back-up call for a burglary suspect pursuit on May 28, 2007. He alleges that his supervisor, Sgt. Rodriguez, hit the suspect's bicycle causing injuries to the suspect. He further alleges that Sgt. Rodriguez told him to delete/destroy the ICOP video reflecting the incident. Plaintiff alleges he denied his supervisor's request which resulted in further incidences of retaliation against him. He sets out seventeen different claims in his first amended complaint, which is attached to this memo.

Case Procedural Background

The City filed a Motion to Dismiss the Complaint on February 4, 2008 which was later denied by the Court on March 1, 2009. During this same time, another case involving a KWPD officer who was also represented by Plaintiff's counsel, Mick Barnes, was very active in which the City prevailed at trial. As such, very little activity occurred in the Klosowski case and Notice of No Activity was filed by the Court on July 1, 2011. Shortly thereafter, Plaintiff's counsel filed a Motion for Status and an Order Setting Case Management Conference was filed by the Court and set for June 11, 2012. The Judge then issued a Case Management Order setting the matter for trial in April or May 2013. A re-structuring of judges occurred within the jurisdiction and the case was reassigned from Judge Mark Jones to Judge Tegan Slaton. Judge Slaton set a Status Hearing on February 21, 2013 and the case was then set for trial on September 16, 2013. The case was tried for more than a week. The case ultimately resulted in a mistrial being granted by the Court upon the City's request. The mistrial occurred during closing arguments after all evidence and witnesses were presented to the jury. After the trial one juror indicated that after the jury was excused they agreed that they would have awarded the Plaintiff even more money than he sought. Another juror echoed those sentiments and commented negatively on the credibility of some of the City's witnesses.

The case was reset for trial to commence on September 15, 2014. At a pre-trial conference on September 12th, the parties informed the Court that they had reached a tentative settlement subject to Commission approval. The Court reset the trial for Monday the 22nd to allow the Commission to consider this settlement proposal.

Plaintiff's Demand and Settlement

If Plaintiff were to prevail at trial under the whistleblower and constructive termination claims, he would be entitled to reinstatement, lost wages, benefits, pension, seniority rights and other lost remuneration. Attorney's fees and costs are also an element of damages under the whistleblower claim. Prior to any award of fees and costs, Plaintiff is claiming over \$400,000 in damages and recently asserted a claim to an additional \$30,000 in accrued sick and vacation time. Given that this will be the second time the case is tried, I would expect an attorney fees

and costs figure in excess of \$200,000, given recent conversations with Plaintiff's attorney. Accordingly, an adverse judgment would result in a judgment in excess of \$600,000. I do not believe there is any way a jury could find a "middle ground" and envision this as an all or nothing result at trial.

The proposed settlement amount was the result of considerable debate and discussion with Plaintiff's counsel and our insurance company. While the settlement figure is significant, so is the potential exposure that would come from a judgment against the City. Since our insurer agreed with the settlement proposal, I am now in a position to recommend that the Commission approve this agreement. Again, our maximum exposure is \$100,000. Since we have already paid \$4,000 in costs such as court reporter fees, we will not have to utilize any more than \$96,000. Our insurance company will fund the remainder of the \$287,500 amount.

Please contact me with any questions comments or concerns.