



COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 10/27/2016 Meeting Date: November 17, 2016

Name: Joel Foreman Department: County Attorney

Division Manager's Signature: *Ben Scott*

1. Nature and purpose of agenda item:

Approval of Mediated Settlement Agreement in Employment Dispute

Attach any correspondence information, documents and forms for action i.e., contract agreements, quotes, memorandums, etc.

2. Fiscal impact on current budget.

Is this a budgeted item? N/A
 Yes Account No. _____
 No Please list the proposed budget amendment to fund this request

Budget Amendment Number: _____ Fund: _____

FROM: _____ TO: _____ AMOUNT: _____

For Use of County Manger Only:
 Consent Item Discussion Item

M E M O R A N D U M

To: Bucky Nash, Rusty DePratter, Scarlett Frisina, Everett Phillips, Ron Williams
From: Joel F. Foreman
Cc: Ben Scott
Re: Kelly Lowrey vs. Columbia County
Date: October 26, 2016

Attached for your review is an October 24, 2016, Settlement Agreement reached through Mediation with Kelly Lowrey and his counsel. This agreement, if approved by the Board, will resolve Mr. Lowrey's dispute stemming from his allegations that he was subjected to a hostile work environment as well as his objections to disciplinary actions taken against him during the course of his employment with Columbia County. The agreement includes his resignation effective November 17, 2016.

As consideration for entry into this Settlement Agreement, Mr. Lowrey will be paid the sum of \$124,200, with \$24,200 of that sum paid by the County. Mr. Lowrey will also receive a payout of his accrued leave time, and will remain on paid administrative leave through November 17, 2016.

Mr. Lowrey is releasing any and all claims against Columbia County, its Board of County Commissioners, officers, employees, insurers, and representatives.

It is necessary for the Board to approve this agreement before it is effective. I am, therefore, requesting that consideration for approval of this agreement be placed on the November 17th Board Agenda.

Importantly, the agreement **prohibits** public comment by either party except during the Board's consideration of the Agreement at a public meeting.

If you have any questions or concerns, please don't hesitate to contact me. I anticipate briefing each of you individually in advance of the November 17th meeting and look forward to speaking with you about this matter at that time.

SETTLEMENT AGREEMENT, WAIVER AND RELEASE

THIS SETTLEMENT AGREEMENT, WAIVER AND RELEASE (hereinafter "this Agreement") is made and entered into, by and between Columbia County Board of County Commissioners (hereinafter "Columbia County") and Robert Kelly Lowrey (hereinafter "Lowrey").

When used hereafter the phrase "Columbia County" or "Columbia County Board of County Commissioners" includes all of the following: Columbia County Board of County Commissioners, its current or former board members, officers, employees, insurers, and representatives and agents both in their official capacity and personally.

Upon approval by the Columbia County Board of County Commissioners, the "Effective Date" of this Agreement shall be November 17, 2016, which is more than 8 days after Lowrey's execution of this Agreement, as set forth below, provided that Lowrey does not exercise his right to revoke as set forth herein.

WHEREAS, Columbia County and Lowrey desire to fully and finally settle all existing or potential claims and disputes between Lowrey and Columbia County, whether known or unknown as of this date including, but expressly not limited to, claims asserted in by Lowrey concerning his employment with Columbia County and alleging a violation of §112.3187, Fla. Stat. (2015), defamation, libel, slander, or intentional infliction of emotional distress. The parties agree as follows:

1. **Obligations of Columbia County:** In consideration of Lowrey's commitments set forth below:

- (A) Columbia County shall place Lowrey on administrative leave through November 17, 2016, and pay him his salary through that date. Consequently, he shall receive the following paychecks:
 - i) \$1,809.23 less applicable withholding on October 25th;
 - ii) \$1,809.23 less applicable withholding on November 10th;
 - iii) \$1,163.08 less applicable withholding on November 24th.
- (B) Columbia County shall pay Lowrey his accrued leave, including personal holiday, compensatory, sick, and annual in the amount of \$4,082.00, less applicable withholding.
- (C) Columbia County shall provide to Lowrey and Lowrey's attorneys, Law Office of Marie Mattox, P.A., two checks for a total of \$124,200.00 made payable to the Law Office of Marie Mattox, P.A., for non-wage damages and full payment of attorney's fees and costs.
- (D) Columbia County agrees to pay the fees and costs of the mediator, Kelly Overstreet Johnson for her mediation services.

- (E) Columbia County shall cause all of Lowrey's disciplinary records to be placed in an envelope marked "SEALED" and filed with Lowrey's personnel records.
- (F) Columbia County agrees to provide Lowrey with a letter of recommendation attached as Exhibit A on Columbia County letterhead.

The payments referred to above will be made within twenty (20) business days of the Effective Date of this Agreement. These amounts are paid in settlement of all of Lowrey's claims against Columbia County through the date of the execution of this Agreement as more specifically stated hereafter in paragraph 2(c), including but not limited to settlement of Lowrey's claims concerning his employment with Columbia County and alleging a violation of §112.3187, Fla. Stat. (2015), defamation, libel, slander, or intentional infliction of emotional distress. Lowrey acknowledges that this is valid consideration for his agreement to the provisions herein. Lowrey further acknowledges that he is accepting this amount as full payment by Columbia County. Lowrey agrees he is solely responsible for all tax payments that may exceed the amount withheld by Columbia County and agrees to indemnify Columbia County for any liability therefore, and for any interest and penalties that become due for Columbia County's agreement not to withhold any additional taxes from these amounts or for any other reason.

2. **Obligations of Lowrey.** In consideration of Columbia County's agreement to the terms herein:

a) Lowrey shall voluntarily resign from Columbia County, effective upon approval of this Agreement by the Columbia County Board of County Commissioners, by executing the letter attached hereto as Exhibit B contemporaneously with his execution of this Agreement. Lowrey agrees not to apply for re-employment or reinstatement with Columbia County, which is defined herein as only Columbia County and does not include the entities or individuals in the introductory paragraph, or in any other capacity provide services in the future to Columbia County as an employee, temporary agency employee, independent contractor or consultant. Lowrey understands that if he does apply for employment with Columbia County, Columbia County shall have no obligation to consider Lowrey as a candidate for employment. Should Lowrey become employed by Columbia County in the future in violation of this Agreement, this Paragraph will serve as a legitimate nondiscriminatory and non-retaliatory basis for Columbia County's termination of Lowrey's employment.

b) Lowrey hereby represents that he has not filed and will not file any complaints or lawsuits concerning the circumstances of his employment with Columbia County with any federal, state, county or municipal agency or court with regard to any matter covered in this Agreement. Lowrey understands that Columbia County has reasonably relied on Lowrey's representations in this paragraph in agreeing to perform those obligations set forth in paragraph no. 1 of this Agreement. If Lowrey files a charge with the U.S. Equal

Employment Opportunity Commission that would otherwise have been released by this paragraph, Lowrey may be limited to non-monetary relief.

c) In exchange for the consideration provided, Lowrey hereby waives, releases, and forever discharges Columbia County of and from any and all claims, demands, damages, lawsuits, obligations, promises, actions, charges, rights, and causes of action, both known and unknown, in law or in equity, of any kind whatsoever particularly, without limiting the generality of the foregoing, all matters relating to or arising out of Lowrey's hire and employment by Columbia County; job assignments at Columbia County; terms and conditions of employment at Columbia County; treatment by management and co-employees at Columbia County; and Lowrey's departure from Columbia County. The claims, rights, and causes of action covered by this Waiver and Release include, but are expressly not limited to, any claim, right, or cause of action based on any federal, state or local law, constitution, executive order, statute or ordinance, including without limitation, the National Labor Relations Act of 1935, as amended; the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §§141-187; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Civil Rights Act of 1866 and 1871; the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §621, *et seq.*, and all amendments thereto; the Family Medical Leave Act of 1993; the Employee Polygraph Protection Act of 1988; the Worker Adjustment and Retraining Notification Act; the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; the Rehabilitation Act of 1973, as amended; the Americans With Disabilities Act of 1990, as amended; the Employee Retirement Income Security Act of 1974, as amended (except any rights that may be vested under any retirement plan sponsored by Columbia County); the Occupational Safety and Health Act of 1970, as amended; the Fair Credit Reporting Act; the Uniformed Services Employment and Re-employment Rights Act; the Veteran's Benefits Improvement Act of 2004; Article X §24 of the Florida Constitution; the Florida Qui Tam Act, Fla. Stat. §§68.082 *et seq.*; Executive Order Nos. 11246 and 11478; the Florida Human Rights Act of 1977, §§760.01, *et seq.*, Fla. Stat.; the Florida Civil Rights Act of 1992, as amended; §440.205 Fla. Stat.; §§448.101-448.105 Fla. Stat.; §448.01, §448.07, §448.08, §448.09, §448.110, §760.50 and §768.72 Fla. Stat.; Chapter 772; Fla. Stat. Chapter 687; Fla. Stat. Chapter 934; and any amendments to the foregoing, and any other claim, right, or cause of action founded in tort (including negligence), personal injury, contract (whether oral, written or implied), public policy, estoppel, specific performance, recall from layoffs, reinstatement, for unpaid wages, unpaid overtime, unpaid benefits, severance pay, vacation pay, sick pay, violation of covenant of good faith and fair dealing, misrepresentation, defamation, libel, slander, damage to reputation, invasion of privacy, fraud, intentional or negligent infliction of emotional distress, interference with prospective economic advantage, interference with contractual relations, assault, battery, any action based on retaliation, any action based on whistle blower activity, or any other common law or equitable basis of action, which Lowrey had, now has, or may claim to have against Columbia County, or which Lowrey hereafter shall or may have for any reason, known or unknown, against Columbia County through the date Lowrey signs this Agreement, except those which may not lawfully be waived.

f) Lowrey agrees that he will not voluntarily cooperate with any other person or entity who files or expresses a desire to file a grievance, claim, lawsuit, cause of action or any other claim of any nature whatsoever against Columbia County. Lowrey will not take any action or cause or encourage others to take any action which is inconsistent with the provisions of this Agreement. This Agreement does not preclude Lowrey from complying with any valid subpoena or other valid legal means of compulsion, which may be issued by a court of competent jurisdiction or government agency.

g) Neither Columbia County nor Lowrey will make any public comments about this Agreement except as necessary for the Columbia County Board of County Commissioners' and staff discussion and consideration for approval in its November 17, 2016, public meeting.

3. **Remedies for Breach.**

(A) ADEA. In the event that Lowrey brings and prevails in an action against Columbia County based on an ADEA claim released in paragraph 2(c), Columbia County will be entitled to offset any recovery by the amounts paid under this Agreement or the amount recovered by Columbia County, whichever is less. In the event that Columbia County prevails in such an action, Columbia County will be entitled to all remedies authorized by applicable law.

(B) All Other Claims. In the event that Lowrey brings an action against Columbia County based on any other claim released in paragraph 2(c), Columbia County may, at its option, and as applicable: (a) stop making payments that would otherwise have been due under this Release; (b) demand the return of any payments that have been made under this Release; (c) plead this Release as a bar to any such action; and (d) seek any and all remedies available, including but not limited to injunctive relief and monetary damages, costs and reasonable attorneys' fees.

4. **Non-Admission.** Neither this Agreement, nor anything contained herein, is to be construed as an admission of liability or wrongdoing by Columbia County whatsoever. Columbia County expressly denies it has engaged in any wrongdoing or unlawful conduct.

5. **Severability.** In the event that any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall continue unabated and in full force and effect.

6. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the parties and shall not be modified or superseded except upon express written consent of the parties to this Agreement. Lowrey agrees, that apart from the payments being made pursuant to this Agreement, Lowrey is not entitled to any other payments or other consideration from Columbia County.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida. The parties agree that any dispute concerning this Agreement shall be litigated in Columbia County, Florida.
8. **Attorneys Fees.** If either party engages the services of an attorney in the enforcement of the terms herein, the non-prevailing party shall pay the reasonable attorney's fees and costs of the prevailing party.
9. **Agreement Not to be Used as Evidence.** This Agreement shall not be admissible as evidence in any proceeding except where one of the parties to this Agreement seeks court approval of this Agreement, seeks to enforce this Agreement or alleges this Agreement has been breached, or where one of the parties is ordered to produce this Agreement by a court or administrative agency of competent jurisdiction. Lowrey further agrees that, in the event a court or administrative agency orders this Agreement to be produced, Lowrey will provide immediate written notice to Columbia County so Columbia County's attorneys can seek a protective order from that court or agency requiring that this Agreement be produced or filed only under seal and that other parties to any such proceedings shall not disclose the existence or terms of this Agreement for purposes not related to the proceeding in which this Agreement was ordered to be produced.
10. **Acknowledgement.** Lowrey acknowledges that he has read and understands this Agreement, and he specifically acknowledges the following:
 - (a) That he has been given the opportunity to consult with an attorney, before signing this Agreement; and
 - (b) That he has been given twenty-one (21) days to decide whether to sign this Agreement; if he signs the Agreement prior to the twenty-one (21) day period, it is because Lowrey freely chooses to do so. The parties agree that any changes, whether material or immaterial, to the originally-offered Agreement do not restart the twenty-one (21) day period; and
 - (c) That he is waiving, among other claims, age discrimination claims under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §621, *et seq.*, and all amendments thereto; and
 - (d) That if he signs this Agreement, he has seven (7) days in which to revoke his signature, and that the Agreement will not become effective or enforceable until after the Effective Date (in other words, the revocation period must have expired, and Lowrey must not have exercised his right to revoke). Specifically, Lowrey understands that he will not receive the payment referred to herein until after the Effective Date, as provided herein. To revoke this Agreement, Lowrey must send written notice, through his counsel, to counsel for Columbia County, no later than the eighth (8th) day after Lowrey's signing of the Agreement; and
 - (e) That, by signing this Agreement, Lowrey is not waiving or releasing any claims based on actions or omissions that occur after the date of his signing of this Agreement.
11. **Signatures.** This Agreement may be signed in counterparts and each counterpart shall

have the same force and effect as though the signatures were contained in a single document.

IN WITNESS WHEREOF, and intending to be legally bound hereby, *Robert Kelly Lowrey*, and the duly authorized representative of *Columbia County* execute this Settlement Agreement, Waiver and Release consisting of five (5) pages and including eleven (11) enumerated paragraphs, by signing below voluntarily and with full knowledge of the significance of all of its provisions.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT, WAIVER AND RELEASE INCLUDES A RELEASE OF ALL CLAIMS.

Robert Kelly Lowrey
Robert Kelly Lowrey

By: _____
Columbia County Board of County Commissioners

10-24-2016
Date

Date

*Subject to Approval
of Board of County
Commissioners.*

[Signature] 10/24/16

Joel Freeman
County Attorney

To whom it may concern:

Kelly Lowrey was originally employed with Columbia County in December 2014 in the position of Sports Marketing Director. During his employment, he established the Columbia County Sports Commission, attended conferences around the country representing Columbia County and our sports facilities and negotiated contracts for sporting events hosted in Columbia County. He has been actively involved in all aspects of sporting events in our county that have been hosted in our Southside Sports Complex. He is a hard worker and conscientious and we wish him well in his future endeavors.

Exhibit A

October 24, 2016


Ms. Paula Vann
Executive Director
Columbia County Tourist
Development Board
Lake City, Florida

Re: Letter of Resignation

Dear Ms. Vann:

Please consider this my letter of resignation effective November 17, 2016. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Robert Kelly Lowrey".

Robert Kelly Lowrey

Exhibit B