

#980767

Submitted  
by MJR 11/9/98 com  
(KL)

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereinafter "Agreement") is made and entered into by and between Kelly M. DeRasmo (hereinafter "DeRasmo" or "Employee") and the City of Gainesville (hereinafter "Employer" or "City").

**WITNESSETH:**

WHEREAS, Employee has been and is employed by the City; and

WHEREAS, Employee and the City wish to fully and finally resolve all disputes between themselves including, but not limited to, those differences arising out of Employee's employment and separation from employment with the City; and

WHEREAS, Employee and City have had an opportunity to fully review this Agreement, have had the opportunity and have been encouraged to discuss all aspects and the legal significance of the Agreement with their attorneys, which they have done, and fully and completely understand the legal significance of the Agreement; and

WHEREAS, Employee and City acknowledge the legal and binding effect of the Agreement, and the exchange of benefits and payments for promises hereunder; and

WHEREAS, Employee and City acknowledge that they have had a reasonable amount of time to review the Agreement and to discuss the legal significance of the Agreement with their attorneys; and

WHEREAS, Employee and City acknowledge that they have carefully read all of the provisions of this Agreement and that they have entered into the Agreement knowingly and voluntarily.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

FIRST: This Agreement shall not in any way be construed as an admission by the City of any alleged wrongful act of any kind or nature whatsoever by the City or any of its agencies, officers, elected officials, or employees. This Agreement is not an admission of liability, and furthermore, the City specifically disclaims any liability or wrongdoing whatsoever.

SECOND: For and in consideration of the promises set forth in this Agreement, the City agrees to the following, subject to the approval of same by the City Commission after a public hearing as required by Florida Statute §164.106:

The City agrees to make the following payments on a date (the Disbursement Date) on or before ten (10) business days following approval of this Agreement by the City Commission:

A) On the Disbursement Date:

1. The City will pay Employee the gross sum of TWENTY-TWO THOUSAND EIGHT HUNDRED TWENTY-ONE AND 52/100 (\$22,821.52), and

2. The City will pay Employee as back pay, the gross sum of FIFTY-TWO THOUSAND ONE HUNDRED SEVENTY-EIGHT and 48/100 (\$52,178.48) less appropriate deductions for federal withholding and other applicable taxes.

B) If within thirty (30) calendar days after the Disbursement Date, Plaintiff contributes the gross sum of THREE THOUSAND SIX HUNDRED EIGHTY-THREE AND 50/100 (\$3,683.50) to the City of Gainesville Police Officers and Firefighters Retirement Fund, for the purpose of funding additional credited service for the Employee, then the City shall immediately thereafter contribute the gross amount of FIVE THOUSAND EIGHT HUNDRED THIRTEEN AND 40/100 (\$5,813.40) to the City of Gainesville Police Officers and Firefighters Retirement Fund for the purpose of funding additional credited service for the Employee.

THIRD: Upon completion of the conditions described in paragraph SECOND B), the Employee shall be deemed by the City to have earned credited service in the City of Gainesville's Consolidated Police Officers and Firefighters Retirement Plan based upon an eligibility date of July 25, 1994, as reflected on the New Employee Job Offer Form Firefighter - Certified on file in the Human Resources Department. Accordingly, the City acknowledges that the Employee's official date of hire for purposes of eligibility for pension shall be designated as July 25, 1994. Provided further, however, the parties recognize and agree that the determination as to eligibility for, and the amount of, pension benefits is the sole responsibility of the Board of Trustees of the Consolidated Police Officers and Firefighters Retirement Plan.

FOURTH: The City will pay Plaintiff's attorney's fees and costs, which amount will be negotiated between the parties or determined by the Court, pursuant to 42 U.S.C. §1988, 42 U.S.C. §2000e-5(k), and §760.11(5), Fla. Stat.

FIFTH: For and in consideration of the promises of the City set forth in this Agreement, Employee agrees, on behalf of herself, her heirs, personal representatives, administrators and anyone claiming by or through her, forever unconditionally and irrevocably to release, acquit, and discharge the City, its agencies, its past and present officers and elected officials, supervisors, employees, representatives, administrators, successors, assigns, and insurers (hereinafter collectively "the City's Releasees") from any and all claims and causes of action, attorney's fees, suits, obligations, promises, agreements, controversies, damages, debts and demands, liabilities and losses of every kind, character, and nature including third party claims for indemnity or contribution, that Employee has ever had or now has, known or unknown, or that any person or entity claiming through Employee may have or claim to have against the

City's Releasees. This Agreement specifically releases the City's Releasees from any and all obligations arising out of Employee's employment and separation from employment with the City, including, but by no means limited to, any claims for wrongful termination, discrimination, harassment, retaliation, promissory estoppel, intentional infliction of emotional distress, negligent hiring, negligent supervision, negligence, invasion of privacy, defamation, slander, and/or violation of any federal, state, or local statute or ordinance, and any other employment benefit or compensation. This Agreement is not intended to release any claims based on any fact, matter, incident, injury, event, circumstance, happening, occurrence, and or thing that arose or occurred after the effective date of this Agreement. Additionally, this Agreement is not intended to release any claims that arose or occurred, before, at the time of, or after the effective date of this Agreement which deal with the Employee's rights, if any, to Worker's Compensation benefits, health insurance claims, or overtime wage claims under 29 U.S.C.A. §207 arising out of her employment with the City.

SIXTH: In the event that any of the monies paid pursuant to this Agreement are determined by any governmental entity to constitute taxable income, Employee agrees that she is liable and fully responsible for payment of any and all taxes normally and customarily paid by the Employee, including all penalties, interest, or other costs attributable to the late payment of such taxes.

SEVENTH: DeRasmo represents that she has not filed any additional complaint or charge against the City with the Equal Employment Opportunity Commission ("EEOC"), the United States Department of Justice, the Florida Commission on Human Relations, the Federal or Florida Department of Labor, or with any other local, state, or federal agency or court. DeRasmo further agrees that if she has filed such complaint or charge with any of the above-

mentioned agencies or with any court, or if any person or entity should bring such a charge, claim, complaint, or action on her behalf, she hereby waives and forfeits any right to recover additional benefits, compensation, and all fees under such claim and will exercise every lawful and good faith effort to have such claim dismissed.

EIGHTH: DeRasmo expressly waives and relinquishes all claims arising under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §2000e et seq.; the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended, 29 U.S.C. §621 et seq.; the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12101, et seq.; the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq.; the Florida Civil Rights Act of 1992 ("FCRA") Fla. Stat. §760.01 et seq.; Fla. Stat. §§448.101-.105; and every other local, state, or federal law concerning employment rights or claims. This Agreement is not intended to release any claims based on any fact, matter, incident, injury, event, circumstance, happening, occurrence and or thing that arose or occurred after the effective date of this Agreement.

NINTH: DeRasmo represents that she has not heretofore assigned or transferred, or purported to assign, transfer, to any person or entity, any claim or any portion thereof or interest therein related to any claim against the City, including any claim arising out of her employment with the City.

TENTH: This Agreement shall be binding upon DeRasmo and upon her heirs, administrators, representatives, executors, successors, and assigns, and the City, its agencies, its elected officials, successors, and assigns, and shall inure to the benefit of the City's Releasees.

ELEVENTH: City and DeRasmo represent that no inducements, statements, or representations have been made that are not set out in this Agreement and that neither party relies

on any inducements, statements, or representations not set forth herein. DeRasmo further represents that she is of sound mind and body to enter into this Agreement, that she has discussed the legal significance and ramifications of it with her attorney, and that she enters into it freely and voluntarily. City has discussed the legal significance and ramifications of this Agreement with its attorneys and it enters into it freely and voluntarily.

TWELFTH: Any and all prior understandings and agreements between DeRasmo and the City with respect to the subject matter of this Agreement are merged into this Agreement, which fully and completely expresses the entire Agreement and understanding between DeRasmo and the City with respect to the subject matter hereof. This Agreement may not be orally amended, modified, or changed and may be amended, modified, or changed only by written instrument or instruments executed by duly authorized officers or other representatives of the City and DeRasmo.

THIRTEENTH: Within one day of receipt of payment of the money identified in paragraph Second A), DeRasmo agrees to dismiss the Complaint styled Kelly M. DeRasmo v. City of Gainesville, filed in the United States District Court for the Northern District of Florida, Case No.: 1:97CV118 MMP, and any other complaint that she has filed against the City with prejudice, pursuant to the Rules of Civil Procedure.

FOURTEENTH: This Agreement is made and entered in the State of Florida, and shall in all respects be interpreted, enforced and governed, under the laws of this State. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties.

FIFTEENTH: Should any provision of this Agreement be determined to be illegal or invalid, the validity of the remaining provisions shall not be affected thereby and the illegal or

invalid provision shall be deemed not to be a part of this Agreement, unless the invalidation of that provision would result in the Agreement not carrying out its intended effect of resolving all disputes, and potential disputes, between the parties, in which case the Agreement will be voidable by either party.

SIXTEENTH: The City of Gainesville will not discriminate against the Employee because she has participated in the lawsuit.

SEVENTEENTH: As used in this Agreement, the singular or plural shall be deemed to include the other whenever the context so indicates or requires.


EIGHTEENTH: This Agreement is contingent upon approval by the City Commission of the City.

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AS PROVIDED IN THIS AGREEMENT UP TO THE EFFECTIVE DATE OF THIS AGREEMENT.**

Executed this 9<sup>th</sup> day of November, 1998, by Kelly M. DeRasmo.

  
WITNESS

  
KELLY M. DERASMO

  
Bernard H. Dempsey, Jr., Esquire  
Jeffrey K. Grant, Esquire  
DEMPSEY & SASSO  
P. O. Box 1980  
Orlando, Florida 32802-1980  
ATTORNEYS FOR DeRASMO



Executed this 4<sup>th</sup> day of NOVEMBER, 1998, by the City of Gainesville.

CITY OF GAINESVILLE

BY: Wayne Bowers  
TITLE: City Manager



Marion J. Radson, City Attorney  
Elizabeth A. Waratuke, Litigation Attorney  
CITY ATTORNEY'S OFFICE  
CITY OF GAINESVILLE  
P. O. Box 1110  
Gainesville, Florida 32602  
ATTORNEYS FOR THE CITY