



# AGENDA ITEM MEMORADUM

**Town Attorney**

**Susan L. Trevarthen**

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> Aug 23, 2011	Aug 12 <sup>th</sup>
<input type="checkbox"/> Sept 12, 2011 1 <sup>st</sup> BUDGET PUBLIC HEARING	Sept 1 <sup>st</sup>
<input type="checkbox"/> Sept 13, 2011	Sept 2 <sup>nd</sup>
<input type="checkbox"/> Sept 26, 2011 2 <sup>nd</sup> BUDGET PUBLIC HEARING	Sept 15 <sup>th</sup>
<input type="checkbox"/> Sept 27, 2011	Sept 16

\*Subject to Change

- |  |   |                                       |                                       |
|--|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation          | <input type="checkbox"/> Reports        | <input type="checkbox"/> Consent      | <input type="checkbox"/> Ordinance    |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

**SUBJECT TITLE: Settlement Agreement with John Olinzock**

**EXPLANATION:** On May 27, 2011, Olinzock filed a Complaint against the Town alleging wrongful termination and retaliatory discharge in connection with his April 26, 2010 termination from Town employment (the "Complaint"). At the direction of the Town Commission, the Town Attorney negotiated a settlement agreement with Olinzock, the terms of which are summarized below:

- **Dismissal of the Complaint with Prejudice.** Within five business days of the effective date of the Agreement (the date when the Town Manager executes the Agreement as authorized by the Resolution), Olinzock will file a Notice of Dismissal with Prejudice of the Complaint.
- **Mutual Releases.** Both parties release and waive any and all claims of any kind against the other party that arose prior to the execution date of the Agreement. Further, Olinzock agrees that the release and waiver bars any claim or demand for damages, costs, fees, or other expenses, including attorney's fees, incurred in connection with his employment with the Town and subsequent termination.
- **Consideration.** In consideration for Olinzock's waiver and release of all claims against the Town, the Town agrees to pay Olinzock seven thousand dollars (\$7,000.00). This payment is not pensionable income, and must be made within ten days of Olinzock's filing of the Notice of Dismissal with Prejudice of his Complaint.

**EXPECTED OUTCOME:** It is recommended that the Town Commission consider the adoption of the resolution approving the settlement agreement between the Town and Olinzock.

**EXHIBIT(S):** Resolution and Attached Settlement Agreement

**SOURCE OF FUNDS:**

Transfer of \$7,000 in Acct #001.519.000.500.497 Contingency to Acct# 001.519.000.500.497 Legal Expense- Other Issues

Reviewed by Town Attorney

Yes  No

Town Manager Initials

*CS*

RESOLUTION NO. 2011-26

1           **A RESOLUTION OF THE TOWN COMMISSION OF THE**  
2           **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA**  
3           **APPROVING SETTLEMENT AGREEMENT BETWEEN**  
4           **THE TOWN OF LAUDERDALE-BY-THE-SEA AND JOHN**  
5           **OLINZOCK; AUTHORIZING EXECUTION OF THE**  
6           **SETTLEMENT AGREEMENT; PROVIDING FOR**  
7           **IMPLEMENTATION AND FOR AN EFFECTIVE DATE.**  
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10           **WHEREAS**, the Town Commission of the Town of Lauderdale-By-The-Sea, Florida  
11 (the "Town") desires to resolve and settle litigation, which is pending between the Town and  
12 John Olinzock ("Olinzock"), in accordance with the terms of the Settlement Agreement attached  
13 hereto as Exhibit "A"; and

14           **WHEREAS**, the Town Commission finds that approval of the Settlement Agreement  
15 between the Town and Olinzock is in the best interest of the Town.

16           **NOW THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN**  
17 **COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS**  
18 **FOLLOWS:**  
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20           **Section 1. Recitals Adopted.** Each of the above stated recitals is hereby adopted and  
21 confirmed.

22           **Section 2. Settlement Agreement Approved.** The Settlement Agreement between the  
23 Town and Olinzock, in substantially the form attached hereto as Exhibit "A", is hereby approved,  
24 and the Town Manager is hereby authorized to execute the Settlement Agreement on behalf of the  
25 Town.

26           **Section 3. Implementation.** The Town Manager and Town Attorney are hereby  
27 respectively authorized to take any and all actions necessary to implement the terms of the  
28 Settlement Agreement.

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29            **Section 4. Effective Date.**    This Resolution shall take effect immediately upon  
30 adoption.

31            PASSED AND ADOPTED THIS \_\_\_\_ day of August, 2011.

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Mayor Roseann Minnet

38    Attest:

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Town Clerk June White, CMC  
(CORPORATE SEAL)

49    APPROVED AS TO FORM:

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Susan L. Trevarthen, Town Attorney

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is entered into by and between JOHN OLINZOCK ("OLINZOCK") and the TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, including but not limited to its current and former employees, agents, administrators, representatives, commissioners, successors and assigns (collectively, the "TOWN").

WHEREAS, OLINZOCK commenced employment with the TOWN in January 2007;

WHEREAS, the TOWN terminated OLINZOCK's employment as Acting Town Manager on or about April 26, 2010;

WHEREAS, OLINZOCK filed a lawsuit against the TOWN in the Circuit Court for the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida, which is styled *John Olinzock v. Town of Lauderdale-By-The-Sea* CASE NO: 11-12272 (18), in which he alleges that the TOWN terminated him in violation of Sections 440.205 and 448.101 *et. seq.*, Florida Statutes, and that the TOWN failed to pay him out for certain accrued leaves that he maintained at the time of his termination (the "Complaint");

WHEREAS, the TOWN categorically denies any and all of OLINZOCK's allegations;

WHEREAS, the parties recognize that the resolution of these differences will require the expenditure of significant funds and resources by both parties; and

WHEREAS, the parties hereto prefer to enter into a compromise in order to avoid the expense of further proceedings.

NOW THEREFORE, in consideration of their mutual promises contained herein, the parties hereby agree as follows:

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TOWN

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\_\_\_\_\_  
OLINZOCK

1. **Dismissal of the Complaint with Prejudice.** Within five (5) business days of the effective date of this Agreement as set forth in Paragraph 8 herein, OLINZOCK will file a Notice of Dismissal with Prejudice of the Complaint.

2. **General Waiver of Rights and Claims.**

a. OLINZOCK hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the TOWN from the beginning of the world until the date of execution of this Agreement, including, but not limited to, any claim(s) under:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Age Discrimination in Employment Act;
- The Older Workers Benefit Protection Act;
- Florida Wage and Hour laws;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Family and Medical Leave Act of 1993;
- Florida and federal whistle-blower laws, including § 112.3187 and § 448.101 *et. seq.*, Florida Statutes;
- Florida Workers' Compensation Law, including § 440.01 *et. seq.*, Florida Statutes;
- Any claim for a payout of any accrued vacation, sick or compensatory leave and/or any claim for severance pay;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance; or
- Any public policy, contract or common law claims, including any tort claims (e.g., negligent or intentional infliction of emotional and/or psychological distress;

negligent retention; supervision or training; defamation; assault; battery; false imprisonment; wrongful termination; loss of consortium; etc.) whether based on common law or otherwise.

Further, OLINZOCK acknowledges and agrees that this release and waiver bars any claim or demand for damages, costs, fees, or other expenses, including attorneys' fees, incurred in connection with his employment with the TOWN, his termination from that employment, or with any of the above-referenced claims. OLINZOCK understands and agrees that with respect to the claims he is waiving in this Agreement, he is waiving not only the right to recover money or other relief in any action he might institute, but also that he is waiving any right to recover money or any other relief whatsoever in any action that might be brought on his behalf by any other person or entity, including but not limited to, the EEOC or any other federal, state or local government agency or department.

OLINZOCK understands that the foregoing list of causes of action which have been waived is meant to be illustrative rather than exhaustive, and understands and acknowledges that he is waiving and releasing the TOWN from any and all causes of action of any nature whatsoever. It is OLINZOCK's intention to fully, finally and forever resolve and release any and all disputes he may have or believe himself to have against the TOWN with respect to any alleged acts occurring before the effective date of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected.

b. The TOWN hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever against OLINZOCK that the TOWN has or had knowledge of as of the date this Agreement is fully executed by the parties. OLINZOCK understands that the TOWN may pursue a claim against OLINZOCK should the TOWN become aware of the basis for such claim after this Agreement is fully executed.

                      
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OLINZOCK

3. **No Pending Lawsuits, Claims or Charges and Covenant Not to Sue.**

OLINZOCK represents that, other than the Complaint, he has no charges or claims pending against the TOWN with any federal, state, or local agency or department. OLINZOCK also represents that, other than the Complaint, he does not currently have pending before any court any dispute of any kind against the TOWN. OLINZOCK further represents and agrees that he will not hereinafter pursue, initiate, or cause to be instituted any dispute released herein against the TOWN, and represents that he has not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person, any dispute released by him herein. If it is determined that OLINZOCK has any lawsuit, charge or claim of any kind pending against the TOWN in addition to the Complaint, OLINZOCK agrees to dismiss all such, charges, claims, and/or lawsuit with prejudice immediately upon execution of this Agreement.

4. **Consideration.** In consideration for OLINZOCK's waiver and release of all claims against the TOWN, and fulfilling all other promises as set forth herein, the TOWN agrees to pay OLINZOCK the total sum of Seven Thousand Dollars and Zero Cents (\$7,000.00), which shall be subject to Form 1099 treatment. The parties agree and understand that the foregoing payment shall not be considered pensionable income to OLINZOCK. This payment shall be made within ten (10) business days of the date on which OLINZOCK files a Notice of Dismissal with Prejudice of the Complaint as set forth in paragraph 1 herein. The parties agree and acknowledge that the payment delineated above is good, valuable and sufficient consideration for OLINZOCK's full waiver and release of all claims and his fulfilling all other promises set forth herein. OLINZOCK acknowledges that without this Agreement, he would not otherwise be entitled to the consideration he is receiving pursuant to this Agreement.

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5. **Hold Harmless Provision.** OLINZOCK agrees that if it is later determined by the Internal Revenue Service that any additional taxes of any type should have been deducted from the payment he received (if any) under this Agreement, he will indemnify and hold the TOWN harmless and assume any and all liability for any taxes, interest or penalties assessed against them.

6. **Time to Consider Signing Agreement.** OLINZOCK acknowledges that he has been given a reasonable period of time of not less than twenty-one (21) days within which to decide whether to sign this Agreement. OLINZOCK understands and agrees that any changes or amendments to this Agreement, whether material or not, will not re-start the twenty-one (21) day period. OLINZOCK understands and agrees that he can use all or any part of the twenty-one (21) day period to decide whether to sign this Agreement. OLINZOCK further acknowledges that he has, in fact, taken a reasonable period of time to consider this Agreement.

7. **Seven (7) Day Period to Revoke.** OLINZOCK understands that he can revoke this Agreement within seven (7) calendar days after he signs it. (The seven (7) day revocation period is counted by calendar days. If the seventh (7<sup>th</sup>) day falls on a Saturday, Sunday or legal holiday, the seventh (7<sup>th</sup>) day will be the next business day.) Any revocation within this period must be in writing and must be received by Brett J. Schneider, Esq., Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., 200 East Broward Boulevard, Suite 1900, Fort Lauderdale Florida 33301, by 5:00 p.m. on the seventh (7<sup>th</sup>) day following his execution of the Agreement. OLINZOCK understands and agrees that, in the event that he revokes this Agreement, this Agreement will become null and void, the TOWN will owe nothing pursuant to this Agreement.

8. **Commission Approval and Effective Date.** This Agreement will become effective upon approval by the TOWN Commission during a public meeting. OLINZOCK

TOWN

  
OLINZOCK

understands that this Agreement will not be presented to the Commission for approval until OLINZOCK executes the Agreement and the seven (7) day revocation period set forth in paragraph 7 expires. After the seven (7) day revocation period has expired, and if OLINZOCK has not revoked this Agreement, the Agreement will be presented to the TOWN Commission for approval.

9. **No Precedent Set.** The parties agree that this Agreement is based upon the unique facts and circumstances of this particular case and does not establish any precedent, pattern or evidence of past practice for the resolution, disposition or determination of any other matter. OLINZOCK further acknowledges that this Agreement is being entered into by the parties as a compromise of the disputed claims and not on the merits for the purposes of avoiding the expense and inconvenience of further litigation. Neither this Agreement, nor any other consideration made and contained herein is construed to be an admission of liability on the part of the TOWN or OLINZOCK.

10. **Non-Admission of Wrongdoing.** The parties agree that neither this Agreement nor the furnishing of any consideration under this Agreement shall be construed as an admission by any party of any wrongdoing, liability or unlawful conduct. In fact, the parties deny that they have done anything wrong or are liable in any way to the other party.

11. **No Future Employment.** OLINZOCK agrees that he is not entitled to reinstatement of employment with the TOWN, and that he will not apply for or otherwise seek employment with the TOWN in the future.

12. **Public Record.** The parties acknowledge that a fully executed copy of this Agreement shall be placed in OLINZOCK's personnel file with the TOWN. OLINZOCK understands and agrees that under the Public Records Law, the TOWN is required to, and shall upon

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OLINZOCK

request by any third party, disclose the terms of this Agreement, and the TOWN shall comply with all federal, state, and local laws requiring disclosure of public records.

13. **Disputes.** In the event of a dispute as to the interpretation or application of, or an alleged breach of, this Agreement, the parties agree that such dispute **SHALL PROCEED TO ARBITRATION** in Broward County, Florida. Any such arbitration will be held in accordance with the rules and regulations of the Federal Mediation and Conciliation Service ("FMCS"). Should either party submit a dispute to arbitration, FMCS shall provide the parties with a panel of seven (7) names, from which the parties will alternatively strike names (with the TOWN striking first) until there remains only one name and that individual shall serve as arbitrator. The parties further agree that this Agreement shall be governed by the laws of the State of Florida. The prevailing party in any dispute under this provision shall be entitled to their reasonable attorneys' fees and costs and the non-prevailing party in any dispute under this provision shall be solely responsible for paying the arbitrator's fee for the arbitration.

14. **Severability.** If any provision of this Agreement, other than the provisions of paragraph 2, is declared illegal or unenforceable by any court of competent jurisdiction and if it cannot be modified to become enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

15. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the parties, except as otherwise specified in this Agreement. OLINZOCK acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with his decision to sign this Agreement except for those set forth in this Agreement.

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OLINZOCK

16. **Consultation with Legal Counsel.** OLINZOCK acknowledges that he has been encouraged by the TOWN to consult with an attorney of his choice regarding the terms of this Agreement before signing this Agreement and, has in fact, consulted with an attorney regarding the term of this Agreement.

17. **Amendment.** This Agreement may not be amended except by written agreement signed by all parties.

18. **Headings.** Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.

19. **Acknowledgement.** OLINZOCK acknowledges that he has carefully read and understands this Agreement consisting of nine (9) pages and agrees that the TOWN has not made any representations other than those contained herein. OLINZOCK also acknowledges that he enters into this Agreement voluntarily, without any pressure or coercion and with full knowledge of its significance, and this Agreement constitutes a full and absolute settlement and bar as to any and all claims he had, has, or may have against the TOWN.

THE PARTIES HAVE READ, UNDERSTOOD, AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO THIS AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE BETWEEN THE TOWN AND THE OLINZOCK. HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THE BENEFITS SET FORTH ABOVE, OLINZOCK FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO RELEASE, WAIVE, AND SETTLE ALL CLAIMS HE HAS OR MIGHT NOW

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OLINZOCK

HAVE AGAINST THE TOWN FROM THE BEGINNING OF TIME UNTIL THE EFFECTIVE DATE OF THIS AGREEMENT.

IN WITNESS WHEREOF, OLINZOCK and the TOWN have executed this Agreement as of the date set forth below.

**JOHN OLINZOCK**

By:  \_\_\_\_\_

Date: 25 JULY 2011

**TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA**

By: \_\_\_\_\_  
Constance Hoffmann  
Town Manager

Date: \_\_\_\_\_