

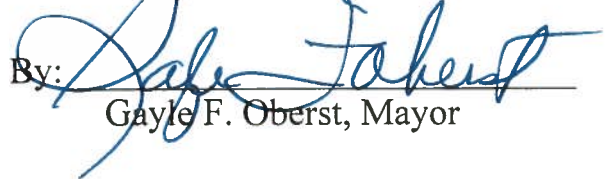
RESOLUTION 15-141

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Settlement Agreement and General Release between the City and Kathryn M. Lowe, in the basic amount of Thirty Five Thousand Dollars and Zero Cents (\$35,000.00), related to personal injury litigation arising from an incident involving a City canine, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 24th day of September, 2015.

CITY OF PANAMA CITY BEACH

By: 
Gayle F. Oberst, Mayor

ATTEST:


Diane Fowler, City Clerk

**SETTLEMENT AGREEMENT
AND GENERAL RELEASE**

This Settlement Agreement and General Release (hereinafter "the Agreement") is entered into by and between KATHRYN M. LOWE ("LOWE") and the CITY OF PANAMA CITY BEACH, FLORIDA (the "City"), as follows:

WHEREAS, Lowe filed a lawsuit against the City of Panama City Beach, Florida in the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida, Case No. 2014-CA-76 as a result of a dog bite inflicted by the police canine dog known as "K-9 Argo" on or about July 25-26, 2010, and,

WHEREAS, Lowe and the City (together, "the parties") voluntarily submitted this case to mediation on September 9, 2015, and each has determined that their respective interests would best be served by resolving any and all claims that they may have against one another without any further proceedings.

NOW THEREFORE, in consideration of the completion of the terms outlined herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The City agrees that it, or others on its behalf, shall pay Lowe the total sum of Thirty-Five Thousand and no dollars (\$35,000.00) as full and complete settlement and satisfaction of any and all claims that Lowe has or may have had against the City, including the claims she has asserted in the above-referenced lawsuit and including but not limited to any claims for damages, attorneys' fees, costs, and any relief to which Lowe may have been entitled to in the above-referenced lawsuit. This sum shall be paid in the form of a check payable to "the Pittman Trust f/b/o Kathryn M. Lowe."

2. The payment of the above-referenced settlement amount shall occur only after the executed original of this Agreement and of an Internal Revenue Service Form W-9 executed by Lowe and her attorneys are first returned to the City's counsel in this matter.

3. This Agreement is subject to, and conditioned upon, approval by final vote of the City Council.

4. In exchange for the payment of monetary compensation described in Paragraph 1 above, Lowe releases the City, Officer Jason Gleason, the Florida Municipal Insurance Trust, and the Florida League of Cities, Inc., and their agents, employees, legal representatives, insurers, successors, and assigns, if any, and any other person, partnership, corporation, association, organization or entity now or previously acting directly or indirectly in the interest of or on behalf of the City, along with any other related entities thereof, personally, officially, or in any capacity

whatsoever, from any and all manner of actions, suits, liens, debts, damages, injuries, claims and demands whatsoever, at law or in equity, arising out of or under any federal, state, or local law, statute, ordinance, public policy, Executive Order, or constitutional provision, or concerning any other claim of any type, which Lowe may now have or which Lowe may have had prior to the date she executes this Agreement, to the maximum extent permitted by law. This release does not apply to any first party insurance company of record, including automobile, health, Medicaid, or other.

5. Lowe agrees to ensure that the above described action is dismissed with prejudice, reserving jurisdiction only to enforce the terms of the parties' settlement agreement as reflected herein. Dismissal shall be filed within five (5) days of completion of all other terms of this Agreement, if this action is not already dismissed and closed.

6. Lowe and the City recognize and agree that execution of this Agreement constitutes a total settlement and release of all claims against the City ever made by or available to Lowe as of the date of this Agreement.

7. Lowe acknowledges that she has entered into this Agreement voluntarily with full understanding of its terms and conditions; that she has been represented by competent legal counsel of her own choosing throughout the pendency of the lawsuit and the negotiations leading to her entry into this Agreement; and that she has been advised regarding her rights. In the event that Lowe shall ever commence any action against the City seeking to avoid her obligations under this Agreement, Lowe further acknowledges and agrees that all the other obligations under this Agreement shall otherwise remain in full force and effect.

8. Neither this Agreement, nor anything contained herein, or anything represented or averred by Lowe or by the City is to be construed as an admission by the City of any liability, wrongdoing or unlawful conduct whatsoever. It is further understood and agreed that this Agreement is the compromise of a disputed claim, and that the City expressly denies any liability for the acts complained of by Lowe and that this Agreement is intended merely to avoid further litigation and, once and for all, to end any dispute between Lowe and the City.

9. Lowe covenants and agrees, except as required by law, never to commence, aid in any way, or prosecute any action or any proceeding against the City for her own behalf based upon any claims, demands, causes of action, obligations, damages, or liabilities of any kind; provided that this provision shall not operate as a bar to a proper cause of action by Lowe based solely upon future conduct of the City occurring beyond the date Lowe signs this Agreement that is totally unrelated to Lowe' claims asserted in the above-referenced pending civil action.

10. Lowe agrees that the only consideration provided to her by the City for entering into this Agreement is that stated herein; that no other promises or inducements of any kind have been made to her by any person or entity to cause her to

execute this Agreement; and, that she fully understands its meaning and intent including but not limited to its final and binding effect. Lowe acknowledges that no oral representations have been made to her by the City or its legal counsel regarding the terms of this Agreement including the tax implications (if any) of any payment made pursuant to this Agreement.

11. Lowe and the City agree that, aside from the amount of settlement, each party shall bear their own attorneys' fees and costs incurred in connection with this matter including the preparation, review of, and entry into this Agreement.

12. This Agreement contains and constitutes the entire agreement, understanding, and stipulation of the parties with respect to the matters contemplated herein and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof. The terms of this Agreement are contractual, not a mere recital, and may be enforced. No change, modification, or waiver of any provision of this Agreement shall be valid unless in writing and signed by each of the parties.

13. This Agreement shall be construed in accordance with the laws of the State of Florida.

14. The provisions of this Agreement are severable and if any part of it is found to be void or unenforceable the remaining provisions shall remain fully valid and enforceable.

15. The parties agree that no waiver of any breach of any provision or term of this Release shall be deemed to constitute consent to any continuation of such breach, act, or omission.

16. Lowe warrants and represents that she is fully entitled to give this complete release and discharge.

17. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument.

18. Lowe agrees that this Release shall be binding upon her heirs, executors, administrators, successors, and assigns.

19. Lowe agrees that she shall be solely responsible for all taxes imposed by reason of receipt of any amount of compensation payable under this Agreement, and she agrees to indemnify the released parties of any taxes, interest or penalties, they may incur as a result of Lowe's failure to meet her tax obligations, if any.

20. All notices, requests, or other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person; by expedited delivery service; when posted by United States registered or certified mail, postage prepaid; or, when transmitted via electronic mail, facsimile, telex, cable, or any other mechanical form of written communication, confirmed by mail, postage prepaid, to the last known address of the party.

Representations With Regard to Medicare's Interests
(Check one of the following boxes)

- ☐ I, Kathryn M. Lowe, hereby warrant and represent that I presently am not, nor have I ever been enrolled in Medicare Part A or Part B. Further, Lowe has no claim for Social Security Disability benefits nor is she appealing or re-filing for Social Security Disability benefits.
- ☐ I, Kathryn M. Lowe, hereby warrant and represent that I am presently receiving Social Security Disability benefits.
- ☐ I, Kathryn M. Lowe, am a male whose date of birth is _____, and has a Medicare claim Number of _____. I am presently enrolled in Medicare Part A or Part B or previously was enrolled from _____ to _____. I warrant and represent that there has been full disclosure of my Medicare status to all released parties.

21. Lowe is solely responsible for the satisfaction of any medical or other liens related to the action. Lowe and her counsel agree to hold harmless, indemnify and defend the City and all released parties from any lien or cause of action, including, but not limited to, an action by CMS to recover or recoup Medicare benefits or loss of Medicare benefits, if CMS determines that the money set-aside has been spent inappropriately or for any recovery sought by Medicare, including past, present, and future and/or conditional payments.

22. The parties agree that the terms of the Agreement shall remain confidential except to the extent that disclosure is required by law or order of court.

THE UNDERSIGNED, HAVING READ AND UNDERSTOOD THIS RELEASE, VOLUNTARILY AND OF HER OWN FREE WILL, AGREES TO ALL OF ITS PROVISIONS.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of September 2015.

Kathryn M. Lowe

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this ____ day of September 2015, by Kathryn M. Lowe, who is [] personally known to me or who has produced _____ as identification.

NOTARY PUBLIC

Print, type or stamp name and expiration date

CITY OF PANAMA CITY BEACH,
FLORIDA
BY:
ITS:

STATE OF FLORIDA
COUNTY OF BAY

The foregoing instrument was acknowledged before me this ____ day of September 2015, by _____, who is [] personally known to me or who has produced _____ as identification.

NOTARY PUBLIC

Print, type or stamp name and expiration date