

MEMO



Office of the City Administrator

To: All City Employees

From: Ed Mitchell, City Administrator *Edmund Mitchell*

Date: June 16, 2010

RE: Voluntary Separation Program

As you know, we are constantly looking for ways to operate efficiently within our budget while continuing to provide top-notch services to our residents and taking care of our employees. As we seek to tighten our budget, we are offering a Voluntary Separation Program which might be well suited for some employees. This Program provides for an opportunity to voluntarily resign from the employment of the City in exchange for certain benefits.

In the coming days, we will be holding educational meetings at various work sites. In the meantime, please review the following documents which will tell you more about this Program.

- Resolution No. 235-10 – This outlines the **Eligibility Requirements, Payments and Benefits** offered under this Voluntary Separation Program (VSP). Employees meeting certain criteria may voluntarily elect to separate from City employment on or by September 30, 2010.
- Calendar of Information Meetings – Eligible employees are encouraged to attend one of the meetings
- Release Agreement – Eligible employees wishing to participate in the program will be required to complete and sign this form.
- “Common Questions” - Provides answers to questions that may be asked.

The Mayor, City Commissioners and senior management staff have worked very diligently to bring this program forward. I sincerely hope that you will make every effort to attend one of these educational meetings.

“An Equal Opportunity Employer”

RESOLUTION NO. 235-10

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, ESTABLISHING A VOLUNTARY SEPARATION PROGRAM; PROVIDING FOR CONFLICTS AND FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, The City is committed to continued efforts to identify cost-saving options and to implement programs that will successfully reduce recurring costs throughout the organization while minimizing the impact on employees; and

WHEREAS, as one such means, the City wishes to offer, for a limited time, a program to provide employees with an opportunity to resign from employment under a voluntary separation program, as a cooperative way for the City to achieve a portion of its goal while supporting those employees who desire to move onto different opportunities; and

WHEREAS, the City Commission of the City of West Palm Beach, Florida, finds that it is in the best interest of the City to offer a limited voluntary separation program due to the administrative and financial benefits to the City and eligible employees;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission hereby creates a Voluntary Separation Program, available for a limited time, for any employee who, as of June 16, 2010, satisfies the following criteria:

- a. Is a non-probationary, full-time employee at any City facility;
- b. Has not submitted his/her resignation or notice of retirement prior to June 16, 2010;
- c. Has not previously retired from City employment and subsequently returned to City employment; and
- d. Is not in the following job classifications as shown below:

<u>Department</u>	<u>Job Classification</u>
Police	Emergency Communications Operator I
Police	Emergency Communications Operator II
Public Utilities	Water Plant Operator Trainee
Public Utilities	Water Plant Operator

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Public Utilities	Water Plant Operator II
Public Utilities	Water Plant Operator III
Public Utilities	Water Plant Shift Supervisor
Public Utilities	Water Treatment Plant Superintendent
Public Utilities	Waste Water Operator Trainee
Public Utilities	Waste Water Plant Operator
Public Utilities	Lead Waste Water Plant Operator
Public Utilities	Waste Water Treatment Plant Superintendent

Employees who satisfy all criteria are referred to as “Eligible Employees”.

SECTION 2: Eligible Employees who elect to participate in the Voluntary Separation Program shall receive all payments or benefits to which they would be entitled upon resignation of service as provided by Chapter 62 of the Code of Ordinances; Federal, State or local law; or applicable collective bargaining agreement; and consideration as shown in italics, below:

- a. *Twelve (12) weeks lump sum payment based on the employee’s current base rate, excluding longevity and any other incentives;*
- b. Payment of 100% of earned Comp Time;
- c. Payment of 100% of Earned Personal Leave (EPL);
- d. Payment of 100% of accrued Vacation Time;
- e. For Eligible Employees represented by SEIU with more than 15 years of service: Lump sum payment of 75% of accrued Sick Leave in accordance with Art. 18, Sec. 6.A. of the collective bargaining agreement;
- f. For Eligible Employees represented by SEIU with from ten (10) to fifteen (15) years of service: Lump sum payment of 50% of accrued Sick Leave in accordance with Art. 18, Sec. 6.B;
- g. For all other Eligible Employees (not represented by SEIU) who have more than 10 years of continuous service: Lump sum payment of 50% of accrued Sick Leave; and
- h. *For Eligible Employees with less than ten (10) years of service: Lump sum payment of 25% of accrued Sick Leave;*

RESOLUTION NO. 235-10

- i. The 30-year service bonus of one-month's regular salary, if applicable, pursuant to Chapter 62-53, Code of Ordinances;
- j. *The option to*
 - (a) *retain the City's medical/dental insurance plan through December 31, 2010, **OR***
 - (b) *receive a lump sum cash equivalent of the City's portion of premium contribution for the cost of medical/dental insurance coverage through December 31, 2010. If option (b) is taken, the employee's insurance will end on the last day of the month in which the employee resigns; and*
- k. Upon the effective date of termination from the City's medical/dental insurance, program participants shall be eligible for COBRA coverage in accordance with federal, state and local laws and regulations in effect at that time. Program participants shall also be eligible to enroll in the City's retiree health insurance plan if they meet plan criteria as of their last day of employment.

SECTION 3: Eligible Employees may participate in the Voluntary Separation Program only in accordance with the following requirements and procedures:

- a. Interested employees shall be required to sign a written release of claims. Releases will be available by contacting Patricia Brosamer or Sylvia Gregory in the Human Resources Department.
- b. The required release is a written acknowledgement that participation in the Voluntary Separation Program is voluntary, and in consideration of receiving the payments and benefits of the program, constitutes a waiver of any and all legal claims relating to their application, employment, or separation from employment under federal, state law and local law.
- c. Those interested must sign and return the release to Human Resources on or by 5:00p.m. on August 2, 2010.
- d. All days referenced in this procedure are calendar days.
- e. Employees shall be given 45 days to consider the offer and release,

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and seven (7) days to revoke their decision from the date they execute the release. The release shall not become effective until after the seven (7) day revocation period has expired.

- f. Employees who elect to participate in this program may sign the release prior to the expiration of the 45 day period (August 2, 2010) and receive the separation payments and benefits seven (7) days after the signing of the release.
- g. The payment and benefit amount the employee receives under this program will depend on the employee’s separation date and his/her decision regarding the medical/dental insurance as described above in Section 2, subparagraph “j.”
- h. Employees who elect to participate in this program will not be eligible for rehire for any position for a period of one (1) year from their last day of employment with the City (*i.e.*, the employee’s voluntary resignation/separation date).
- i. The employee’s last work day will be coordinated through their department head but will be no later than September 30, 2010.
- j. This is NOT an Early Retirement Program.** Employees who elect to participate in this Voluntary Separation Program will retain all retirement benefits accrued to date of separation.

SECTION 4: This Resolution shall take effect as provided by law.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2010.

(CORPORATE SEAL)

CITY OF WEST PALM BEACH
BY THE CITY COMMISSION

ATTEST:

PRESIDING OFFICER

CITY CLERK

City Attorney’s Office
Approved as to form and legal sufficiency
By: _____
Date: _____

VOLUNTARY SEPARATION PROGRAM - JUNE 16, 2010
RELEASE AGREEMENT

This Release Agreement ("Agreement") between the CITY OF WEST PALM BEACH ("City") and _____ ("Employee") sets forth the terms and conditions upon which the Employee agrees to the City's Voluntary Separation Program.

SECTION 1: MUTUAL UNDERSTANDINGS

The City and Employee both understand and agree that the following are the basis for this Agreement:

- A. Employee is currently employed by the City in good standing and is otherwise eligible for continued employment with the City, with the understanding that the City does not guarantee any employment.
- B. The City does not have any policy or practice requiring the Employee to resign or terminate employment or in any way diminish the terms of employment based on the age of the Employee or any other status protected by law.
- C. By Resolution No. 235-10, the City has offered, for a limited time, a Voluntary Separation Program ("VSP"), whereby employees meeting certain criteria may voluntarily elect to separate from City employment on or by September 30, 2010, and to receive special consideration, payment and benefits as part of the incentive for the employee to separate from City employment. A copy of Resolution 235-10 has been provided to Employee.
- D. Participation in the VSP requires, and Employee's signature below represents that Employee releases the City from all liability as set forth in Section 4, below.

SECTION 2: ELIGIBILITY REQUIREMENTS

Employee represents that s/he has met each of the following eligibility requirements for the VSP. Specifically, as of June 16, 2010, Employee:

- a. Is a non-probationary, full-time employee at any City facility;
- b. Has not submitted a resignation or notice of retirement prior to June 16, 2010;
- c. Has not previously retired from City employment and subsequently returned to City employment; and
- d. Is not in any of the following job classifications: Emergency Communications Operator I or II; Water Plant Operator Trainee; Water Plant Operator; Water Plant Operator II or III; Water Plant Shift Supervisor; Water Treatment Plant Superintendent; Waste Water Operator Trainee; Waste Water Plant Operator; Lead Waste Water Plant Operator; Waste Water Treatment Plant Superintendent

SECTION 3: PAYMENT AND BENEFITS FOR VOLUNTARY SEPARATION

A. As consideration for participation in the City's VSP and Employee's release of claims set forth in Section 4, below, Employee shall receive:

- a. Twelve (12) weeks of current base salary, excluding any incentives or any other compensation beyond base salary;
- b. For Eligible Employees with less than ten (10) years of service: Lump sum payment of 25% of accrued Sick Leave; and
- c. The option to (**circle and initial one**):
 - (1) retain the City's medical/dental insurance plan through December 31, 2010, **OR**
 - (2) receive a lump sum cash equivalent of the City's portion of premium contribution for the cost of medical/dental insurance coverage through December 31, 2010. If this option is taken, the employee's insurance will end on the last day of the month in which the employee resigns.

B. Employee shall also receive all payments to which s/he would be entitled upon resignation of service, as provided by Chapter 62 of the Code of Ordinances; Federal; State or local law; or applicable collective bargaining agreement ("CBA"), including:

- a. Payment of 100% of earned Comp Time;
- b. Payment of 100% of Earned Personal Leave (EPL);
- c. Payment of 100% of accrued Vacation Time;
- d. For Employees represented by SEIU with more than 15 years of service: Lump sum payment of 75% of accrued Sick Leave in accordance with CBA;
- e. For Employees represented by SEIU with from ten (10) to fifteen (15) years of service: Lump sum payment of 50% of accrued Sick Leave in accordance with CBA;
- f. For all other Eligible Employees (not represented by SEIU) who have more than 10 years of continuous service: Lump sum payment of 50% of accrued Sick Leave;
- g. The 30-year service bonus of one-month's regular salary, if applicable, pursuant to Chapter 62-53, Code of Ordinances; and
- h. Upon the effective date of termination from the City's medical/dental insurance, program participants shall be eligible for COBRA coverage in accordance with federal, state and local laws and regulations in effect at that time. Program participants shall also be eligible to enroll in the City's retiree health insurance plan if they meet plan criteria as of their last day of employment.

EMPLOYEE INITIALS _____

C. Payment Election. Employee elects to receive payments set forth in Section A and Section B above as a lump sum payment in the pay period following their last day of employment. Premium payments not paid in lump sum per A.c.(1), above, will be paid by City directly to insurance plan provider.

D. Employee understands that the City will deduct from the payments federal withholding taxes and other deductions the City is required by law to make from wage payments to employees.

E. Employee will receive no other wages, leave or other payments from the City. Employee will not accrue any vacation, sick or other leave time or compensation after their last day of employment.

F. As of the date of the execution of this Agreement, Employee acknowledges that s/he has received full payment of all monies owed, including salary, benefits, and all other monies or benefits s/he is entitled to by virtue of his/her employment with the CITY. Employee agrees to indemnify CITY for any taxes which s/he may owe by virtue of his/her CITY employment and the terms of this Agreement.

SECTION 4: COMPLETE RELEASE AND WAIVER

Employee agrees, without reservation, that his/her entering into the VSP and this Agreement is done voluntarily and for the purpose of taking advantage of the VSP offered by City.

Employee acknowledges that no person, employee, officer or agent of the City has suggested or otherwise attempted to force or coerce the Employee to involuntarily take advantage of the VSP and to terminate the Employee's employment with the City.

Employee agrees to release the City, its officers and employees, from all claims or demands Employee may have based on Employee's employment with the City or the termination of that employment, all legal claims, liability for damages of any nature in law or equity, grievances, and actions of any sort relating to Employee's employment. Such causes of action include, but are not limited to, actions arising under the following laws, including any amendments thereto: 42 U.S.C. 1983; the Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Consolidated Omnibus Budget Reconciliation Act; the Family and Medical Leave Act; the Florida Civil Rights Act; and any and all state and/or local statutory claims and any and all actions Employee may have had or may now have in tort or contract, or otherwise based upon her employment with the CITY. By signing the Agreement, Employee further promises and agrees not to file, cause to be filed, and/or join in the filing of any grievance, charge, claim or action as an individual or as a member of a class in any federal, state or local court or agency, relating to Employee's employment with the CITY, and waives any right to monetary, legal or equitable relief which might be claimed on Employee's behalf by any class representative or government agency with respect to his/her employment with the CITY.

Employee provides this release and waiver in consideration for the payments and benefits under the VSP to which Employee is not otherwise entitled.

SECTION 5: NO FUTURE LAWSUITS

EMPLOYEE INITIALS _____

Employee agrees to not file a lawsuit asserting any claims that are released by this Agreement and waives any cause of action or claim for liability, if any, which are not expressly reserved. Employee agrees that by making this Agreement, the City does not admit any liability for any claims by Employee.

SECTION 6: NON-RELEASE OF FUTURE CLAIMS

This Agreement does not waive or release any rights or claims that Employee may have which arise after the date the Employee signs this Agreement.

SECTION 7: REVIEW AND CONSIDERATION OF AGREEMENT, CONSULTATION WITH ATTORNEY, AND REVOCATION

Employee has received the attached "Exhibit A" containing statistical information regarding those employees eligible and those employees not eligible for the VSP.

Employee has been advised to consult with an attorney of his/her choice prior to executing this Agreement. Employee has been informed that s/he has the right to consider this Agreement for a period of 45 days prior to executing the same. To the extent that Employee takes fewer than 45 days to consider this Agreement, Employee acknowledges that s/he has had sufficient time to consider the Agreement and to consult with counsel and that s/he does not desire or need additional time. Employee also understands that s/he has the right to revoke this release for a period of seven (7) days following its execution by sending written notice by facsimile, 561-494-1035, or by U.S. mail certified, return receipt requested, to: Patrick J. Cooney, Director of Human Resources, 401 Clematis Street, P.O. Box 3366, West Palm Beach, FL 33402. If Employee timely revokes, or breaches this Agreement, s/he agrees to return any and all consideration provided to him/her that s/he would not have received absent entering into this Agreement. In the case of revocation, the effective date for Employee's separation from employment will be voided; in the case of breach, Employee will be deemed to have involuntarily separated on their last day of employment without appeal or rehire rights of any sort.

SECTION 8: TERMINATION OF EMPLOYMENT

Employee will voluntarily terminate his/her employment with the City at 5:00 p.m. effective on or before September 30, 2010, in coordination with their Department Director. After the last day of employment, and during the period in which Employee receives any pay or benefit by virtue of this Agreement, Employee is not to report to work, is personally liable for any torts, and is not subject to workers' compensation benefits.

SECTION 9: NO RETURN TO WORK

Employee will not be eligible for rehire for any position for a period of one (1) year from their last day of employment with the City (*i.e.*, the employee's voluntary resignation/separation date).

EMPLOYEE INITIALS _____

SECTION 10: TERMINATION OF AGREEMENT

It is understood by the parties that all obligations of the City under this Agreement shall terminate upon the death of the Employee.

SECTION 11: GOVERNING LAW

This Agreement will be governed by the laws of the State of Florida and of the United States and will be heard in the Courts of Palm Beach County, Florida, or the federal courts for the Southern District of Florida.

SECTION 12: ENTIRE AGREEMENT

This is the entire agreement between Employee and City. The City has made no other promises to Employee that are not written in this Agreement.

SECTION 13: SIGNATURE AND APPROVALS

EMPLOYEE ACKNOWLEDGES THAT S/HE HAS CAREFULLY READ THIS AGREEMENT, UNDERSTANDS IT AND IS VOLUNTARILY ENTERING INTO IT.

PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

Employee Signature

Print Name

Date

STATE OF FLORIDA }
COUNTY OF PALM BEACH} SS:

The foregoing Settlement Agreement and General Release was acknowledged before me this _____ day of _____, 2010, by _____ who is personally known _____ or produced the following identification _____.

Notary Public-State of Florida

My commission expires: _____ (seal)

Office of the City Attorney
Approved as to form
And legal sufficiency
By: _____
Date: _____

EMPLOYEE INITIALS _____

City of West Palm Beach

2010 Voluntary Separation Program Common Questions

- 1. What is the "2010 Voluntary Separation Program" (VSP)?** The VSP provides employees with separation pay and/or other benefits if they elect to participate by agreeing to the terms of this program and separating from employment.
- 2. Why is this program being offered?** The City of West Palm Beach, like governments across the country, is looking for ways to reduce operating costs. The VSP provides support for employees interested in transitioning out of City employment and aims to reduce the need for layoffs.
- 3. If someone in my department is being laid off, will my VSP participation save that person's job?** Volunteering for separation does not necessarily save a specific job. Managers are making decisions based on the operational needs of each department. The cost savings generated by this program will collectively help us meet our budget reduction requirements and should reduce the overall number of potential layoffs.
- 4. If I don't take the VSP and later get laid off, will I get severance?** If you are involuntarily laid off, you will be eligible for severance pay provided in accordance with Chapter 62 of the Code of Ordinances; Federal, State or local law; or applicable collective bargaining agreement; and additional consideration in exchange for a release of claims.
- 5. Can I take a job at another City location after electing to participate in the VSP?** No. If you accept other City employment prior to your planned separation date under the VSP, you will not receive any severance or other VSP payment or benefit.
- 6. Can I return to work for the City after separating from the City under the VSP?** No. After the VSP separation date **you may not return to employment** as an employee at any City location for a minimum of 12 months after separation. This includes regular, part-time, temporary, seasonal, and employment under an employment contract.
- 7. How should I explain my VSP participation to prospective employers?** While each situation is different, you may choose to inform prospective employers that the City offered an incentive program to eligible employees in order to minimize the need for layoffs and that you chose to participate.

Eligibility

1. **Who is eligible to participate?** Any City employee who, as of June 16, 2010 satisfies the following criteria;

A. Is a non-probationary, full-time employee at any City facility;

B. Has not submitted his/her resignation or notice of retirement prior to June 16, 2010;

C. Has not previously retired from City employment and subsequently returned to City employment; and

D. Is not in the following job classifications as shown below:

<u>Department</u>	<u>Job Classification</u>
Police	Emergency Communications Operator I
Police	Emergency Communications Operator II
Public Utilities	Water Plant Operator Trainee
Public Utilities	Water Plant Operator
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Public Utilities	Water Treatment Plant Superintendent
Public Utilities	Waste Water Operator Trainee
Public Utilities	Waste Water Plant Operator
Public Utilities	Lead Waste Water Plant Operator
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2. **May I participate if I am on a leave of absence?** Yes. If you are on an approved leave of absence and are otherwise eligible, you may apply.

3. **I'm a rehired retiree. Can I participate in this program?** No. Employees who are currently receiving or have received retirement income from the City are not eligible to participate.

4. **Are employees hired by an employment agreement eligible to participate in the VSP?** No. Employees under employment agreements (contract positions) are not eligible for this program.

Procedure

1. What is the deadline for submitting an application to participate in this program? You have until 5:00 p.m. on Monday, August 2, 2010 to apply.

2. Why is August 2, 2010 the final date to make application to participate? This date was selected to ensure that there is sufficient time to administer the program, which includes evaluation of staffing requirements by Department management, the acceptance/approval review process, signing of releases, processing severance pay, and separating employees from their respective departments by September 30, 2010.

3. How do I make application for participation in the VSP? Read all of the information in this information packet. Fill out the "Release Agreement" and submit to Human Resources no later than 5:00 p.m. on Monday, August 2, 2010. You may also want to discuss this opportunity with your own financial advisor.

You will have seven (7) days from the signature date to revoke your release if you choose not to participate in the program.

4. If I elect to participate in the VSP and then obtain another job outside the City, can I leave earlier than September 30, 2010? September 30, 2010 is the final day of employment for employees who apply to participate in the VSP. Participants whose applications have been approved are encouraged to have an earlier separation date. Employees should discuss the date of separation with their Department Director, depending on the operational needs of their department, provided that such is more than seven days after the employee signs the required release.

Benefits

1. What happens to my health insurance?

(A) Retain the City's medical/dental insurance plan through December 31, 2010, OR
(B) Receive a lump sum cash equivalent of the City's portion of premium contribution for the cost of medical/dental insurance coverage through (December 31, 2010). If option (b) is taken, the employee's insurance will end on the last day of the month in which the employee resigns; and

Upon the effective date of termination from the City's medical/dental insurance, program participants shall be eligible for COBRA coverage in accordance with federal, state and local laws and regulations in effect at that time. Program participants shall also be eligible to enroll in the City's retiree health insurance plan if they meet plan criteria as of their last day of employment.

2. Will I be able to get unemployment insurance? The State of Florida determines whether you will receive Unemployment Insurance. Typically, employees voluntarily separating do not qualify for Unemployment Insurance. A separating employee may contact the State's Agency for Workforce Innovation for more information and/or to make application.

3. Will the severance payment be pensionable? No.

4. What is the effect on my DC Plan or 457(b) (Deferred Compensation) Plan? Contributions stop with your last paycheck. You will be eligible for distributions from the DC Plan and the 457(b) Plan according to the Plan rules regarding separation from service. To discuss your options or request a roll-over/distribution form, please contact ING (plan sponsor) at (800)584-6001.

5. Can I contribute my severance pay to my 457(b) Plan (Deferred Compensation) account? Yes, if you receive your severance pay with your final paycheck and it is your last day of employment (provided that you do not exceed the applicable IRS annual contribution limits). Contact the Benefits Division at (561)494-1000 for further information.

Talk to your financial or tax advisor about alternate ways to deal with your severance payment.

City of West Palm Beach

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