

MEMORANDUM

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DATE: NOVEMBER 5, 2009 AD0000

TO: CRA/LA BOARD OF COMMISSIONERS

FROM: CECILIA V. ESTOLANO, CHIEF EXECUTIVE OFFICER

RESPONSIBLE PARTIES: ERASMO MALLARI, CHIEF ACCOUNTING OFFICER
PATRICIA FRANCISCO, DIRECTOR OF HUMAN RESOURCES
CURTIS S. KIDDER, GENERAL COUNSEL

SUBJECT: SETTLEMENT AGREEMENT WITH AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 585, AND JACQUELINE L. FORT IN AN AMOUNT NOT TO EXCEED \$5,000 FOR THE PAYMENT OF PENALTIES AND INTEREST ON UNPAID INCOME TAXES

RECOMMENDATION

That the CRA/LA Board of Commissioners, subject to City Council review and approval, authorize the Chief Executive Officer to execute a Settlement Agreement with the American Federation of State, County and Municipal Employees, Local 585 ("Local 585"), and Jacqueline L. Fort in an amount not to exceed \$5,000 for the payment of penalties and interest on Federal and State income taxes that were not withheld from Ms. Fort's payroll check and not otherwise paid by Ms. Fort, and to take other necessary actions to implement the Settlement Agreement.

SUMMARY

On November 13, 2008, Local 585, on behalf of Ms. Fort, filed a grievance claiming that CRA/LA failed to withhold Federal and State income taxes from Ms. Fort's paychecks for the period of September 2006 to April 2008, that she "reasonably relied on CRA/LA as part of the normal operation of the Agency to withhold State and Federal income taxes," and that her accountant informed her that she owes State and Federal taxes, interest and penalties in the amount of approximately \$17,000.

In September 2009, CRA/LA staff, Local 585 and Ms. Fort reached agreement to resolve the grievance whereby CRA/LA would pay the interest and penalties on the unpaid Federal and State income taxes, approximately \$4,600, and that Ms. Fort would be responsible for the payment of her Federal and State income taxes of \$16,016. Interest and penalties on the unpaid income taxes will continue to accrue until the settlement is approved, but are not expected to exceed \$5,000.

RE

Initial action.

SOURCE OF FUNDS

CRA/LA Operating Fund

PROGRAM AND BUDGET IMPACT

The proposed action is consistent with the FY10 budget. There is no fiscal impact to the City's General Fund as a result of the recommended action.

ENVIRONMENTAL REVIEW

The proposed activity does not constitute a "project" as defined by the California Environmental Quality Act (CEQA).

BACKGROUND

Ms. Fort is an Administrative Analyst in the Geographic Information Systems unit. On September 25, 2006, Ms. Fort submitted a W4 Employee's Withholding Allowance Certificate (W4) requesting an "*Exempt*" withholding status. This was entered into the CRA/LA's payroll system.

On October 2, 2006, Ms. Fort submitted another W4 changing her withholding status from "*Exempt*" to "*Single with Two allowances.*" CRA/LA staff processed this request by entering both the single and two allowances in the payroll system but did not uncheck the "cancel box" to change the exempt status. Staff was unaware of the extra step to cancel exempt status since this was the first such transaction encountered in some time.

On August 5, 2007, Ms. Fort submitted another W4 changing the status to "*Single Status with Zero allowances.*" Staff processed the change in status, but the "*Exempt*" status remained since the check on the cancel box was not deleted.

In April 2008, the error was discovered and corrected. At Ms. Fort's request, the Agency's Chief Accounting Officer sent letters to the Franchise Tax Board (FTB) and the Internal Revenue Service (IRS) acknowledging the error regarding Ms. Fort's withholding allowances and status.

Due to the accounting error, Federal and State income taxes were not withheld from Ms. Fort's paychecks for approximately 19 months, from September 2006 through April 2008. As a result, Ms. Fort owes income taxes to the IRS and the FTB of \$16,016. Penalties and interest on the unpaid income taxes are currently \$4,590. Penalties and interest will continue to accrue until the settlement is approved and CRA/LA's liability for penalties and interest will end at that time. The total penalties and interest should not exceed \$5,000.

On November 14, 2008, Ms. Fort filed a grievance petition alleging that the CRA/LA had failed to withhold state and federal income taxes from her employee payroll checks for the period September 2006 through April 2008. After considerable negotiations, a Settlement Agreement was reached in September 2009 at the Step IV, Chief Executive Officer's level of the Grievance Procedure.

Under the terms of the Settlement Agreement, CRA/LA will pay the funds to Ms. Fort within fifteen business days following the full execution of the agreement. At that point the grievance will be fully resolved. Ms. Fort agrees to provide staff with evidence of payment of the interest and penalties to the IRS and FTB and will indemnify CRA/LA against any actions by the IRS and/or FTB to collect the unpaid taxes, interest or penalties.

Cecilia V. Estolano
Chief Executive Officer

By

Glenn F. Wasserman
Chief Operating Officer

There is no conflict of interest known to me which exists with regards to any CRA/LA officer employee concerning this action.