

AGENDA ITEM SUMMARY

Meeting Date:	JULY 17, 2019
Agenda Category:	CONSENT BUSINESS
Agenda Item Number:	10 F
Subject:	PROPOSED SETTLEMENT AGREEMENT – MCEARCHERN V. CITY OF ROCKLEDGE (CITY MANAGER)

Attachments:	Memorandum; agreement
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Staff Contact:	City Manager Fettrow
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Background:	<p>Former employee James McEarchern filed a Charge of Discrimination against the City with the State of Florida Commission on Human Relations. At all times, the City has denied any wrongdoing.</p> <p>During mediation, which was held on June 21, 2019, the employee agreed to voluntarily dismiss his Charge and all potential claims against the City and resign from employment in exchange for \$7,500, inclusive of all attorney's fees and costs. The settlement agreement also reasserts that the City has committed no wrongdoing. The settlement will be paid by the Florida Municipal Insurance Trust (FMIT).</p> <p>Based upon a review of potential financial and operational litigation costs, and upon the advice and recommendation of outside counsel, as well as City Attorney Miniclier, I respectfully request that Council approve the settlement and authorize my prompt execution of the settlement agreement on behalf of the City.</p>
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Reference:	
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Suggested Action:	Approve the settlement agreement in the amount of \$7,500.00
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CITY OF ROCKLEDGE

e-mail: lnicholas@cityofrockledge.org

web: www.cityofrockledge.org

Lisa C. Nicholas
Public Relations Officer
& City Clerk

TO: Mayor and City Council
FROM: Dr. Brenda Fettrow, City Manager
SUBJECT: Settlement Agreement – James McEarchern
DATE: July 10, 2019

Former employee James McEarchern filed a Charge of Discrimination against the City with the State of Florida Commission on Human Relations. At all times, the City has denied any wrongdoing.

During mediation, which was held on June 21, 2019, the employee agreed to voluntarily dismiss his Charge and all potential claims against the City and resign from employment with the City in exchange for \$7,500, inclusive of all attorney's fees and costs. The settlement agreement also reasserts that the City has committed no wrongdoing. The settlement will be paid by the Florida Municipal Insurance Trust.

Based upon a review of potential financial and operational litigation costs, and upon the advice and recommendation of outside counsel, as well as City Attorney Miniclier, I respectfully request that Council approve the settlement and authorize my prompt execution of the settlement agreement on behalf of the City.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

In order to resolve and settle finally, fully and completely all matters or disputes that now exist or may exist between them, the parties hereby enter into this Settlement Agreement and General Release and agree as follows:

1. **Definitions:**

- (a) **Parties:** The parties to this Settlement Agreement and General Release (the “Release”) are James Howard McEarchern (“McEarchern”); and the City of Rockledge, Florida, including its past, present, and future elected or appointed officials, officers, directors, executives, shareholders, insurers, employees, agents, attorneys, insurers including but not limited to the Florida Municipal Insurance Trust f/k/a the Florida League of Cities, Inc., and representatives (collectively the “Releasee”).
- (b) **The Dispute:** The “Dispute” is defined as James Howard McEarchern’s allegations regarding discrimination and retaliation during his employment with the City of Rockledge, Florida, and all claims raised in McEarchern’s Charge of Discrimination dated April 30, 2019, FCHR No. 201919547 and EEOC No. 15D201900698, filed with the Florida Commission on Human Relations, and any other known or unknown work–related injury or damage whether undiscovered or not reasonably discoverable or not matured or which may have already occurred or developed or may be latent or may in the future occur or develop that McEarchern may have sustained while employed by the City of Rockledge, Florida, as well as all potential legal claims which may arise from McEarchern’ employment with the City of Rockledge, Florida

2. **Release and Discharge by James Howard McEarchern:** McEarchern releases, acquits and forever discharges the Releasee and all other persons, insurers, firms, or corporations with whom the Releasee has been, is now or may hereafter be affiliated, of and from any and all claims, causes of action, suits, debts, dues, sums of money, damages, judgments, and demands whatsoever, in law or in equity, which McEarchern ever had, now has or hereinafter can, shall or may have against the Releasee, including without limitation any and all claims that were or could have been brought in the Dispute as defined in paragraph 1(b), by reason of any matter, cause, or thing, from the beginning of the world to the effective date of McEarchern’ execution of this Release. This Release includes, but is not limited to, grievances, arbitration, or other rights conferred by any collective bargaining agreement; claims arising under the Fair Labor Standards Act of 1938, as amended; Equal Pay Act of 1963; Title VII of the Civil Rights Act of 1964, as amended; the Family and Medical Leave Act of 1993; the Americans with Disabilities Act (ADA); any action brought pursuant to 42 U.S.C. § 1983; the Florida Civil Rights Act of 1992, Fla. Stat. §§ 760.01 – 760.11 *et seq.* and 509.092; claims for unpaid wages, employment discrimination, “whistle-blowing,” retaliation, any right he may have to reinstatement and or reemployment, or other employment–related claims, whether arising out of tort, contract, quasi-contract, implied contract, or other theory of recovery; any action asserting violation of public

policy based on constitutional, statutory, or decisional law setting forth or implying such public policy; and whether for relief of equitable, compensatory, or punitive damages; which McEarchern now has, or which may hereafter accrue or otherwise be acquired on account of or in any way growing out of, or which are the subject of this Settlement Agreement and General Release.

3. **Settlement Amount and Terms:**

- (a) The City of Rockledge, Florida or its insurer or third-party administrator or agent shall issue to McEarchern settlement proceeds in the amount of Seven Thousand and Five Hundred Dollars and No Cents (\$7,500.00) in full satisfaction of all claims that McEarchern asserts or could assert against the Releasee. Payment shall be made in accordance with Paragraph 3(b) below. With respect to any applicable statutory fee provision, the parties agree that these settlement proceeds are inclusive of fees and costs, and that no party shall be construed to be a prevailing party for the purpose of any award of fees and costs. The proceeds shall become due upon McEarchern executing this Release of all claims, written direction from McEarchern or his attorneys as to whom the proceeds are to be paid if different than as set forth in Paragraph 3(b) below, the execution of an IRS Tax Form W-9 by all payees, and receipt of the executed IRS Tax Form W-9 by counsel for the City of Rockledge.
- (b) The settlement proceeds shall be disbursed as follows if not otherwise agreed to in writing by McEarchern and the Releasee: (1) a check payable to "James H. McEarchern" in the amount of Four Thousand Five Hundred Dollars and No Cents (\$4,500.00); and (2) a check payable to "Spielberger Law Group" in the amount of Three Thousand Dollars and No Cents (\$3,000.00). The proceeds will be paid in conjunction with the issuance of an IRS Form 1099. The proceeds will be payable within 10 calendar days from the effective date of this Settlement Agreement and General Release.
- (c) The parties agree that the settlement proceeds represent compensation to McEarchern for alleged but disputed injuries. The Releasee does not make any representation or offer any advice regarding the applicability or incidence of any tax or tax liability that may be incurred because of this settlement. McEarchern acknowledges that he is liable for any and all of his taxes which may result from the payment of settlement proceeds and will indemnify and hold the Releasee or any entity acting on behalf of the Releasee harmless for any taxes due from McEarchern, his attorneys, or his agents, on the sum paid to his or for his benefit under the Settlement Agreement and General Release.
- (d) McEarchern and the City of Rockledge, Florida agree each will bear their own costs and attorney's fees in connection with this Dispute.

- (e) The City of Rockledge, Florida agrees that McEarchern has voluntarily resigned effective June 28, 2019. McEarchern's signed resignation letter is attached as Exhibit A and reflects a resignation date of June 28, 2019.
- (f) McEarchern agrees that he has delivered or arranged for prompt delivery of all City property to a representative of the City of Rockledge.
- (g) After the execution of this Settlement Agreement and General Release, the receipt by McEarchern and his counsel of the settlement proceeds and terms referenced in Paragraph 3(a) through – (f) above, McEarchern agrees to authorize his attorneys to promptly withdraw any pending administrative Charges, including the pending Charge of Discrimination dated April 30, 2019, FCHR No. 201919547 and EEOC No. 15D201900698, filed with the Florida Commission on Human Relations, with prejudice and without his attorneys requiring further authorization. All dismissal papers shall be executed and filed within 10 calendar days of McEarchern's receipt of the settlement proceeds referenced in Paragraph 3(a) above.

4. **Non-Admission Clause:** By entering into this Release, the Releasee does not admit any liability whatsoever to McEarchern or to any other person arising out of any claims asserted, or that could have been asserted in the Dispute, and expressly denies any and all such liability. The Releasee enters into this Settlement Agreement and Release in cooperation with its insurance carrier, in the interest of City residents, and to avoid further legal expenses and costs, disruption to operations, and to otherwise avoid the vexations of litigation.

5. **Voluntary Restraint from Further Comment and Mutual Non-Disparagement Clause:** The parties agree to refrain from further comment regarding this Dispute and resulting Release. This Paragraph shall not prevent McEarchern from commenting on this dispute to his attorneys, his financial/tax advisors, or any professional with whom he has a privileged and confidential relationship. This Paragraph shall also not prevent the parties from commenting where mutually agreed to in writing, or where required by law, or in response to a lawful order or other process of a court or administrative agency of competent jurisdiction.

McEarchern shall not disparage or defame or make any statement that is intended or reasonably likely to disparage or defame, in any manner, form, or medium, directly or indirectly, to any person or entity, (1) the Releasee, separately or collectively; (2) the Releasee's elected or appointed officials, officers, directors, executives, shareholders, insurers, employees, agents, attorneys, and representatives; (3) any aspect of Releasee's business operations; and (4) any aspect of McEarchern's employment with the City of Rockledge, Florida, unless specifically required by law in response to an order or other process of court or administrative agency of competent jurisdiction. McEarchern shall not assist or cooperate with any other person or entity in committing any act that, if committed by McEarchern, would constitute a violation of this Paragraph.

The Releasee shall not disparage or defame or make any statement that is intended or reasonably likely to disparage or defame, in any manner, form, or medium, directly or indirectly,

to any person or entity any aspect of McEarchern's employment with the City of Rockledge, Florida, other than disclosure of dates of employment, wage, duties, and positions held, unless specifically required by law in response to an order or other process of court or administrative agency of competent jurisdiction. The Releasee shall not assist, or cooperate with, any other person or entity in committing any act that, if committed by the Releasee, separately or individually, would constitute a violation of this Paragraph.

In the event of a legal action arising under this Settlement Agreement and General Release, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Any violation of the terms of this Provision shall be deemed a material breach of this Settlement Agreement and General Release. McEarchern and the Releasee understand that terms of this Clause are material terms to this Settlement Agreement and General Release and that the violation of terms of this Clause by one party involves true consequential injuries to another party, which are difficult to assess and value. Therefore, upon proof before a court of competent jurisdiction of a violation of terms of this Clause, the party seeking relief for enforcement of terms of this Clause shall be permitted to recover a reward of liquidated damages in the amount of One Thousand Dollars and No Cents (\$1,000.00). McEarchern and the Releasee each acknowledge that this sum will reasonably compensate the party seeking relief for a violation terms of this Clause and is not punitive. The foregoing shall not be construed to prohibit the maintenance or release of McEarchern's personnel file, or portions thereof, in response to a lawfully issued subpoena by a court or administrative agency or as otherwise required by law.

6. **Future Employment:** McEarchern agrees that he shall not apply for employment or seek independent contractor or volunteer status with the City of Rockledge, Florida or any business or enterprise that is owned or operated by the City of Rockledge, Florida, in the future. If McEarchern submits an application for employment or seeks independent contractor or volunteer status with the City of Rockledge, Florida or any business or enterprise owned or operated by the City of Rockledge, Florida, the City of Rockledge, Florida may, at its sole discretion, consider or disregard the application or bid without incurring any future liability as a result of doing so. This provision shall be interpreted such that McEarchern is waiving any and all future monetary damages for wage loss, future wage loss, or other compensation associated with future attempts to secure employment or a position other than an elected position with the City of Rockledge, Florida

7. **No Participation in any Pending or Future Actions Based on Past or Current Events:** Excluding any claims or rights which cannot be waived by law, including claims arising after the date of this Settlement Agreement and General Release, and the right to file a charge with or participate in an investigation conducted by the EEOC or any state agency, this Settlement Agreement and General Release also does not waive any claims, actions, or rights to enforce the terms of this Settlement Agreement and General Release. In the event that McEarchern files a charge with any federal, state, or local civil rights agency, McEarchern disclaims the right to seek or recover money damages from such a filing. McEarchern further agrees that he will not participate in any manner, including as an absent class member or named plaintiff, in any action asserting any claim released in this Settlement Agreement and General Release, or in any proceeding against the Releasee based upon any facts or alleging any damages

that arose prior to the effective date of this Settlement Agreement and General Release, including his or any other individual's employment with the City of Rockledge, Florida, and his or any other individual's separation from employment with the City of Rockledge, Florida. Nothing provided in this paragraph shall interfere with McEarchern's obligations to respond to a lawfully issued subpoena by a court or administrative agency or as otherwise required by law.

8. **Venue and Attorneys' Fees:** In the event of a dispute arising out of or relating to this Release, the laws of the State of Florida shall be applied in resolving such dispute. The parties further agree that venue for any legal action regarding this Release shall lie solely in Brevard County, Florida. In the event that any party commences an action for damages, injunctive relief, or otherwise to enforce the provisions of this Release, the prevailing party in any such action shall be entitled to an award of their reasonable attorneys' fees and all costs from the nonprevailing party, including appellate fees and costs, incurred in connection therewith as determined by the court in any such action.

9. **Savings Clause:** Should a court or other competent authority render invalid any provision of this Release, the parties agree that this shall not in any manner affect the enforceability of the other provisions of the Release.

10. **Voluntariness:** McEarchern hereby expressly represents and warrants that he is in full command of his physical and mental faculties, that he is not under the influence of alcohol or any drug or other mind-altering substance, and that except for the terms of this Release he has not been offered any inducement and is not under any duress to execute this Release. Further, McEarchern hereby affirms and acknowledges that he has read the foregoing Release, has had an opportunity to consult with an attorney of his choosing regarding its terms, has consulted with an attorney or attorneys of his choosing regarding its terms, that he fully understands the meaning of the terms of the Release, and that the Release is a voluntary, full and final compromise, release and settlement of all claims, demands, injuries, damages, actions or causes of action, known or unknown, occurring prior to execution of the Release.

11. **Neutral Interpretation:** Any controversy over the construction of this Release shall be decided neutrally and without regard to events of authorship or negotiation.

12. **Final Settlement:** This Release constitutes the complete understanding of the parties hereto and supersedes any and all prior agreements, promises, representations, or inducements, whether oral or written, concerning its subject matter. No promises or agreements made subsequent to the execution of this Release by the parties shall be binding unless reduced to writing and signed by authorized representative of the parties.

13. **Counterparts:** This Release may be executed in multiple counterparts or copies, each of which shall constitute an original, and all of which shall constitute one single Release.

[Remainder of page intentionally left blank]

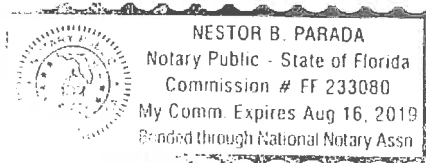
This Release was entered into on this _____ day of June, 2019, and executed by James Howard McEarchern as set forth below.

(Signature)
JAMES HOWARD MCEARCHERN

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of June, 2019, by James Howard McEarchern who is personally known to me or who has produced _____ as identification.

Notary Public, State of Florida
Printed Name: _____
My commission expires: _____



4111

This Release was entered into on this _____ day of July, 2019, and executed on behalf of the City of Rockledge, Florida as set forth below.

(Signature)

(Printed Name)

For THE CITY OF ROCKLEDGE, FLORIDA

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of July, 2019, by _____, who is personally _____ known to me or who has produced _____ as identification.

Notary Public, State of Florida

Printed Name: _____

My commission expires: _____

June 28, 2019

I hereby resign from my employment at the City of Rockledge, Florida, effective immediately.

Sincerely,

James Howard McEarchern

A handwritten signature in black ink, appearing to read "James H. McEarchern", with a stylized flourish at the end.A small, faint handwritten mark or signature in the bottom right corner of the page.