



500 West Big Beaver
Troy, MI 48084
troymi.gov

I-05

CITY COUNCIL AGENDA ITEM

Date: July 24, 2019
To: Honorable Mayor and Members of the Troy City Council
From: Lori Grigg Bluhm, City Attorney
Subject: Ryan Wolf v. City of Troy

Enclosed please find a proposed agreement to settle the Ryan Wolf v. City of Troy lawsuit, which is the result of a facilitation between the parties. For business reasons, City Administration recommends acceptance of the facilitation, which is not an admission of liability. Instead, this is in recognition that the City's defense costs in taking this matter to trial and appeal will greatly exceed the proposed settlement amount by at least \$100,000. In addition to the City's own defense costs, if the plaintiff were to prevail on his claim at trial, the City's potential liability, including damages for lost wages and an attorney fee award, could total between \$250,000 and \$350,000. This amount would be in addition to the City's own defense costs. Therefore, settlement of this matter for \$75,000 is a reasonable settlement amount when compared to the potential liability and defense costs. The City's insurance carrier is also in favor of this resolution and at the facilitation provided its approval of the settlement amount in light of defense costs and potential liability.

Due to the unique factual scenario, and specific actions taken by former City Manager Brian Kischnick, this case presents some unprecedented legal arguments that are unlikely to serve as a basis for additional employment lawsuits against the City. Therefore, it is unlikely that settlement of this lawsuit would serve as a basis for any other City employee to file a similar lawsuit.

According to his lawsuit, Ryan Wolf claims that former City Manager Brian Kischnick directed him to covertly make recordings from cameras covering City Hall. Wolf then accessed the City's restricted closed circuit TV security camera system through another employee's terminal in their locked office. Ten days later, City Council terminated Brian Kischnick (March 11, 2018), and restricted all access to the City's security camera system. After learning of this, and knowing that there was a record of access to the system, Ryan Wolf came forward to his supervisor on March 15, 2018, providing a written statement of his activity. Ryan Wolf was undisputedly an at will employee, who could be terminated by the City at any time for any reason. However, in his lawsuit, he argued that he was protected from termination under the Michigan Whistle Blower's Protection Act. Ryan claims that he was terminated for assisting Kischnick with an "investigation," and that he had no reason to know that Kischnick's "investigation" was not legitimate.

At the facilitation, Ryan initially asked for a monetary settlement of \$250,000, in addition to a number of non-monetary requests, including employment references and full-time future employment as a firefighter. However, through the facilitation process, the facilitator was able to persuade Ryan to drop his non-monetary requests and guided the parties to a proposed settlement of \$75,000, inclusive of Ryan's attorney fees, plus the City's agreement to provide a neutral employment recommendation



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and allow for a resignation rather than a termination. This does not impact Ryan's status as a volunteer fire fighter, but his IT access is limited to only his own fire station. Also, he would not be eligible to apply for any future positions in the City. In exchange for the proposed settlement amount, Ryan will dismiss his lawsuit against the City in its entirety and the City's defense costs will cease. Because the settlement amount is inclusive of all attorney fees and damages Ryan could seek in the lawsuit, he will not be able to recover any additional amount from the City. In addition, Ryan will not only dismiss his current Whistleblower claim, but also any other civil rights, statutory or tort claim he could have made against the City, meaning that he will not be able to assert any other claim against the City in the future arising out of his prior employment.

Please let me know if you have any questions concerning this matter.

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement shall not be construed to be an admission of any obligation or liability by the Defendant CITY OF TROY, its agents, attorneys, officers, employees, servants, insurers, representatives, council members, board members, divisions, departments, courts, related municipalities or authorities or successor municipalities or authorities, heirs, successors or assigns (hereinafter “Defendant”), by whom any liability is expressly denied. This Release and Settlement Agreement is entered into solely to avoid further expenses of litigation.

FOR AND IN CONSIDERATION OF SEVENTY-FIVE THOUSAND & 00/100 DOLLARS (\$75,000.00), adequacy of which is hereby acknowledged, Plaintiff RYAN WOLF, for himself, his agents, his family members, friends, partners, associates, attorneys, heirs and assigns (hereinafter “Plaintiff”), does hereby fully and forever release, acquit, and discharge Defendant of and from any and all claims, grievances, demands, actions and causes of action of every kind, nature and description, whether known or unknown, suspected or unsuspected, and whether founded in fact or in law that Plaintiff may have had, may now have or may hereafter have by reason of any matter, cause, act or omission whatsoever, including, but not limited to, any claim arising out of or in connection with Plaintiff’s employment or relationship with Defendant, Oakland County Circuit Court Case No. 18-166981-CD, all facts giving rise to Oakland County Circuit Court Case No. 18-166981-CD, any claim arising out of or in connection with the Michigan Whistleblowers’ Protection Act, Americans With Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act, Equal Pay Act, Family Medical Leave Act, Title VII, Michigan Persons With Disabilities Civil Rights Act, Michigan’s Elliott-Larsen Civil Rights Act, Michigan’s Bullard Plawecki Employee Right to Know Act, or the First, Fifth or Fourteenth Amendments, as well as any other state or federal statute, any claim based in tort or contract or for costs or for attorneys’ fees, including attorneys’ fees that may have been available under 42 U.S.C. 1988, MCL 15.364 or any other statute, court rule, or regulation, and all other claims and grievances, including claims regarding benefits. The payment referenced in this paragraph shall be made by Defendant’s insurance carrier via a check made payable to Plaintiff and his attorneys.

The claims in the civil action brought by Plaintiff in Oakland County Circuit Court Case No. 18-166981-CD shall be forthwith dismissed, with prejudice and without payment of costs or attorneys’ fees, including attorneys’ fees that may have been available under 42 U.S.C. 1988, MCL 15.364 or any other statute, court rule, or regulation, and all other claims and grievances, including claims regarding benefits, to any party other than the payment described above. Plaintiff hereby authorizes his attorneys to execute a Stipulation for such a dismissal with prejudice of said action.

IT IS FURTHER UNDERSTOOD AND AGREED that Plaintiff shall have twenty-one (21) days from the date of receipt of this Agreement to review it (which period may be shortened if Employee knowingly and voluntarily waives it in writing) and shall have the right, within seven (7) days of signing this Agreement, to revoke it. Defendant agrees and Plaintiff understands that Plaintiff does not waive any rights or claims that may arise after the date this Agreement is executed. Plaintiff further acknowledges that execution of this Agreement is voluntary and that Plaintiff has been advised to consult with an attorney or advisor before executing it, to ensure that Plaintiff fully and thoroughly understands its legal significance.

IT IS FURTHER UNDERSTOOD AND AGREED by the undersigned that Plaintiff hereby relinquishes any and all claims of and entitlement to employment with Defendant, that he will not seek future employment with Defendant, and that if he does so, this agreement shall constitute a legitimate non-discriminatory and non-retaliatory reason for Defendant's refusal to employ Plaintiff. Plaintiff may retain his position as a volunteer firefighter with Defendant's Fire Department, but may only work out of the fire station where he is currently assigned and shall not have access to Defendant's electronically stored documents or information. If Defendant decides to staff its Fire Department with full and/or part-time firefighters in the future, Defendant shall not employ Plaintiff in such a position and should Plaintiff apply for this position, this Agreement shall constitute a legitimate and non-discriminatory basis for Defendant's refusal to employ Plaintiff in this capacity. Plaintiff shall retain any interest in retirement benefits accrued as a result of his employment with Defendant and its Fire Department.

IT IS FURTHER UNDERSTOOD AND AGREED by the undersigned that this settlement is a compromise of a disputed claim and that the payment is not to be construed as an admission of liability by the parties released and the parties further acknowledge that this settlement in no way constitutes an admission or determination on the underlying allegation that any member of the City's City Council violated the Open Meetings Act. To the contrary, the released parties maintain that all of their actions relating to this claim were proper, prudent, and lawful, and the sole purpose of this settlement is to resolve a disputed claim.

IT IS FURTHER UNDERSTOOD AND AGREED by the undersigned hereto that this is not only a full and final release of all known and anticipated damages and injuries, but also of all unknown and unanticipated damages and injuries, arising out of Oakland County Circuit Court Case No. 18-166981-CD, including all consequences thereof, which could have been asserted in this case or which may later occur.

IT IS FURTHER UNDERSTOOD AND AGREED that Defendant shall alter the status of Plaintiff's termination to a resignation. Further, Defendant shall provide a neutral reference for Plaintiff's past employment with Defendant, including only dates of employment, last job title and rate of pay. Plaintiff shall direct all potential employers of Plaintiff to Defendant's Human Resource Director for the reference.

IT IS FURTHER UNDERSTOOD AND AGREED that Defendant cannot, has not, and does not, provide any tax advice to Plaintiff in connection with this settlement. Plaintiff has had the opportunity to seek the advice of his own personal tax advisors/accountants and has relied upon that advice and/or his own advice in executing this Release and Settlement agreement.

IT IS FURTHER UNDERSTOOD AND AGREED by the undersigned that following the execution of this Settlement and Release Agreement and the stipulated dismissal order required to terminate with prejudice the action against Defendant, payment will be delivered to the attorneys for the undersigned.

IT IS FURTHER UNDERSTOOD AND AGREED that this Settlement and Release Agreement contains the entire agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital.

FURTHER, Plaintiff has carefully read the foregoing Settlement and Release Agreement and knows the contents thereof, agrees that the terms contained herein are fair, reasonable, and in the best interest of the undersigned, and signs the same as undersigned's own free acts.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND SETTLEMENT AGREEMENT AND FULLY UNDERSTANDS IT.

Signed, sealed, and delivered the ____ day of _____, 2019.

Witness: _____

RYAN WOLF

STATE OF MICHIGAN)
) ss.
COUNTY OF _____)

On the ___ day of _____, 2019, before me personally appeared Ryan Wolf, to me known to be the person named herein and who executed the foregoing Settlement and Release Agreement and acknowledged to me that he voluntarily executed the same.

_____ Notary Public

_____ County, Michigan.

My Commission Expires: _____

WAIVER OF TWENTY-ONE DAY PERIOD UNDER ADEA

I, Ryan Wolf, hereby waive the twenty-one (21) day consideration period under the Age Discrimination in Employment Act (“ADEA”). This waiver is knowing and voluntary and is not induced by fraud, misrepresentation or threat to withdraw or alter any offer made to me prior to the expiration of the twenty-one (21) day period. Accordingly, I request that the processing of the consideration provided for in the attached document entitled Release and Settlement Agreement (the “Agreement”) be expedited.

I also understand that the seven (7) day revocation period cannot be shortened and that I have the right to revoke the Agreement within seven days following my execution of the Agreement.

Dated: _____

Ryan Wolf

SUBSCRIBED AND SWORN
to before me this ____ day of _____, 2019

NOTARY PUBLIC