

RESOLUTION NO. 2021-048

A RESOLUTION OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPROVING A SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS OF JAMES STEPHEN MCVAY, AS WELL AS THE ESTATE OF JAMES STEPHEN MCVAY, IN THE AMOUNT OF \$6,000 TO BE PAID BY THE VILLAGE; PROVIDING FOR AUTHORIZATION; AMENDING THE BUDGET FOR FISCAL YEAR 2020-2021 TO ALLOCATE FUNDING FOR THE MCVAY SETTLEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, James S. McVay (“McVay”) was employed by North Bay Village (the “Village”) as a police sergeant; and

WHEREAS, McVay was involved in an incident on December 4, 2019, which led to his arrest and for which he was thereafter charged criminally (the “Incident”); and

WHEREAS, as a result of the Incident, the Village placed McVay on administrative leave without pay effective February 24, 2020 and commenced an investigation concerning the Incident (“CCF 19-004 IA”); and

WHEREAS, as a result of the findings of CCF 19-004-IA, the Village terminated McVay’s employment on September 15, 2020; and

WHEREAS, McVay filed grievances challenging his administrative leave without pay status and termination (the “Grievances”) pursuant to the current Collective Bargaining Agreement (“CBA”) covering the Village’s police officers, sergeants and lieutenants; and

WHEREAS, before the Grievances were arbitrated, McVay passed away; and

WHEREAS, on or about April 21, 2021, Sean T. McVay (the “Personal Representative”) was appointed as personal representative of McVay’s estate; and

WHEREAS, on or about May 4, 2021, McVay’s counsel filed a Motion for Substitution of Parties in the Arbitration, seeking for the Personal Representative to be substituted in for McVay in the Grievances; and

WHEREAS, the McVay Estate now stands in the shoes of McVay for purposes of the Grievances; and

WHEREAS, the Personal Representative, on behalf of the McVay Estate, is willing to settle all of the claims that were or could have been brought by McVay and/or the McVay Estate against the Village pertaining to the Grievances, including all costs and attorney's fees incurred in the Grievances, and release the Village of any liability, in exchange for a lump-sum payment of \$6,000, which will be paid by the Village, and such other terms and conditions as set forth in the Settlement Agreement and General Release attached hereto as Exhibit "A" (the "Agreement"); and

WHEREAS, although the Village disputes the merits of the Grievances, the Village Commission desires to accept the Agreement, thereby disposing of all claims against the Village by McVay and/or the McVay Estate, and authorize the Village Manager and Village Attorney to prepare and execute all settlement and related documents consistent with the terms of the Agreement; and

WHEREAS, on September 21, 2020, the Village Commission adopted Resolution No. 2020-56 approving the budget for fiscal year 2020-2021 (the "Budget"); and

WHEREAS, pursuant to Section 166.241(5), Florida Statutes, the Village Commission may amend a budget at any time within a fiscal year; and

WHEREAS, pursuant to Section 35.21(a) of the Village Code of Ordinances, "transfers between line items within a departmental budget, or decreases in line items, not amounting to more than 5% of the total budget of each department, may be made by the Village Manager by written statement describing the transfers and the reasons therefore" ("Minor Amendments"); and

WHEREAS, pursuant to Section 35.21(a) of the Village Code of Ordinances, Minor Amendments "become effective 14 days after posting, unless within that time, the Mayor or any Village Commissioner shall notify the Village Clerk that they wish the transfer placed upon the Village Commission agenda for consideration by the Village Commission"; and

WHEREAS, in the interest of expediency and efficiency, it is recommended that the Village Commission approve the Minor Amendment by resolution; and

WHEREAS, pursuant to Section 35.21 of the Village Code of Ordinances and Florida Law, the Village Commission desires to amend the Budget to allocate \$6,000 for

the settlement, which was previously not in the Budget, by authorizing line item transfers as further provided in Exhibit "B" attached hereto and incorporated herein; and

WHEREAS, the Village Commission finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the Village Commission approves the settlement of all claims that were or could have been asserted by McVay and/or the McVay Estate including costs and attorney's fees, for \$6,000, which will be paid by the Village, and such other terms and conditions as set forth in the Agreement attached hereto as Exhibit "A."

Section 3. Authorization. That the Village Commission authorizes the Village Manager and the Village Attorney to prepare and execute all settlement and related documents consistent with the terms of the Agreement attached hereto as Exhibit "A" and the intent of this Resolution. The Village Manager is further authorized to expend budgeted funds to implement the terms of the Agreement and the intent of this Resolution.

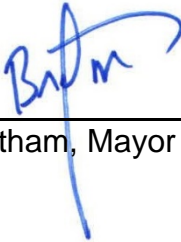
Section 4. Amending Budget. That the Village Commission hereby approves an amendment to the budget to allocate \$6,000 for the settlement by authorizing line item transfers as further provided in Exhibit "B" attached hereto and incorporated herein.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

The foregoing Resolution was offered by Commissioner Dr. Chervony who moved its adoption. The motion was seconded by Vice Mayor Wilmoth and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>YES</u>
Vice Mayor Marvin Wilmoth	<u>YES</u>
Commissioner Richard Chervony	<u>YES</u>
Commissioner Rachel Streitfeld	<u>YES</u>
Commissioner Julianna Strout	<u>YES</u>

PASSED AND ADOPTED on this 13th day of September, 2021.



Brent Latham, Mayor

ATTEST:



Elora Riera, MMC
Village Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Weiss Serota Helfman Cole & Bierman, PL
Village Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between North Bay Village, Florida (the "VILLAGE") and the Estate of James S. McVay ("McVAY ESTATE") (collectively, the "Parties").

BACKGROUND

WHEREAS, James S. McVay ("McVAY") was employed by the VILLAGE as a police sergeant;

WHEREAS, McVAY was involved in an incident on December 4, 2019, which led to his arrest and for which he was thereafter charged criminally (the "Incident");

WHEREAS, as a result of the Incident, the VILLAGE placed McVAY on administrative leave without pay effective February 24, 2020, and commenced an investigation concerning the Incident ("CCF 19-004 IA");

WHEREAS, as a result of the findings of CCF 19-004-IA, the VILLAGE terminated McVAY's employment on September 15, 2020;

WHEREAS, McVAY filed grievances challenging his administrative leave without pay status and termination (the "Grievances") pursuant to the current Collective Bargaining Agreement ("CBA") covering the Village's police officers, sergeants and lieutenants;

WHEREAS, before the Grievances were arbitrated, McVAY passed away;

WHEREAS, the McVAY ESTATE now stands in the shoes of McVAY for purposes of the Grievances;

WHEREAS, the parties now wish to resolve the Grievances based on the terms and conditions which are hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

TERMS

1. All of the above statements are true and correct to the best of the Parties' belief and knowledge.

2. The McVAY ESTATE:

- a. agrees to permanently withdraw the Grievances with prejudice within seven (7) calendar days of the effective date of this Agreement; and
- b. releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it has or may have against the VILLAGE (including but not limited to, its current and former elected officials, attorneys, employees, agents, successors and assigns) from the beginning of the world until the date of execution of this Agreement, including but not limited to any claims relating to CCF 19-004 IA, the Grievances, or the termination of McVAY's employment in connection therewith.

3. The VILLAGE agrees to:

- a. treat McVAY's separation of employment as a voluntary resignation rather than an involuntary termination, which shall include providing the McVAY ESTATE with a badge and retirement ID for McVAY in accordance with the current CBA and Village practice for police

officers, sergeants and lieutenants who voluntary retire in good standing (but the VILLAGE will not submit any amended paperwork to FDLE regarding the nature of McVAY's separation); and

- b. provide the McVAY ESTATE with a lump sum payment of six thousand dollars (\$6,000.00) in full settlement of any claims the McVAY ESTATE has or may have against the VILLAGE, including any claims against the VILLAGE related to McVAY's Grievances and/or termination. The McVAY ESTATE understands and agrees that, other than the payment referenced above, it is not entitled to any additional payment(s) from the VILLAGE arising from McVAY's employment with the VILLAGE, the Grievances, or the termination of McVAY's employment.

4. The Parties agree that this Agreement shall not change or affect McVAY'S separation date for purposes of the Florida Retirement System ("FRS") or any retirement benefit being received by McVAY'S beneficiary through the FRS.

5. This Agreement embodies the complete terms and conditions of the settlement of the Grievances arising from the incident described in CCF 19-004-IA. This Agreement may not be modified or superseded except in writing and with the express written consent of all the Parties.

6. The Parties agree that this Agreement is based upon the unique facts and circumstances of this matter and does not establish any precedent, pattern or evidence of past practice for the resolution, disposition or determination of any other matter.

7. If any provision of this Agreement is deemed invalid, the remaining provisions shall not be affected.

8. In the event it becomes necessary for any party to enforce any of the provisions of this Agreement in any legal or equitable proceeding, each party shall bear its own attorney's fees and costs incurred in such enforcement action. Venue for any litigation regarding this Agreement will be Miami-Dade County.

9. This Agreement will become effective upon the full execution of this Agreement by the Parties, the approval of same by the VILLAGE Commission, and to the extent necessary, approval of the Court assigned to oversee the probate administration of the McVAY ESTATE.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Agreement as of the date set forth below.

NORTH BAY VILLAGE

ESTATE OF JAMES S. MCVAY

By: _____

By:  SEAN MCVAY

Title: _____

Title: PERSONAL REPRESENTATIVE

Date: _____

Date: 8-25-2021

Approved by Resolution No. 2021-



**North Bay Village
Budget Amendment Form**

Department General Government	Date 9/1/2021
Fund(s) to be changed: General Fund	

GL Account	GL Line Item	Transfer to:	Transfer from:
001-19-519-3185	Legal Settlement	\$ 6,000	
001-00-389-3891	Appropriation of Unreserved Fund Balance		\$ 6,000
TOTAL (Columns must be equal)		\$ 6,000	\$ 6,000

Description:

Labor settlement with the Estate of Steven James McVay, a former employee with the Village.

APPROVED BY:

Department Director: _____ **Date:** _____

Chief Financial Officer: _____ **Date:** _____

Village Manager: _____ **Date:** _____

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2. The McVAY ESTATE:

- a. agrees to permanently withdraw the Grievances with prejudice within seven (7) calendar days of the effective date of this Agreement; and
- b. releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which it has or may have against the VILLAGE (including but not limited to, its current and former elected officials, attorneys, employees, agents, successors and assigns) from the beginning of the world until the date of execution of this Agreement, including but not limited to any claims relating to CCF 19-004 IA, the Grievances, or the termination of McVAY's employment in connection therewith.

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9. This Agreement will become effective upon the full execution of this Agreement by the Parties, the approval of same by the VILLAGE Commission, and to the extent necessary, approval of the Court assigned to oversee the probate administration of the McVAY ESTATE.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily execute this Agreement as of the date set forth below.

NORTH BAY VILLAGE

ESTATE OF JAMES S. MCVAY

By: 

By:  SEAN MCVAY

Title: Dr. Ralph Rosado, Village Manger

Title: PERSONAL REPRESENTATIVE

Date: 9/14/2021

Date: 8-25-2021

Approved by Resolution No. 2021- 048