

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (“AGREEMENT”) is made and entered into by and between David Wise (hereinafter referred to as “Wise”) and the City of Rocky Mount (hereinafter referred to as “City”) (collectively hereinafter referred to as “the Parties”).

WHEREAS, Wise was an employee of the City; and

WHEREAS, the Parties desire to settle fully any and all claims, which could be the subject of any litigation or disagreement between them;

NOW, THEREFORE, in consideration of the promises contained herein as well as the payment of monies to Wise as hereinafter recited, the sufficiency of which are hereby acknowledged by Wise, it is agreed as follows:

1. **Payment.** For and in consideration of the promises, releases, and agreements made herein by Wise, the City agrees to pay the amount of Seven Thousand Dollars (\$7,000.00) to Wise, on his behalf, o:

a. The gross amount of Five Thousand Two Hundred Fifty Dollars and No Cents (\$5,250.00), which is subject to all lawful withholdings, to David Wise; and

b. The amount of One Thousand Seven Hundred Fifty Dollars (\$1,750.00), which is not subject to lawful withholdings, to Ballard Law, PLLC, who is legal counsel for Wise.

c. The checks will be sent to Wise’s counsel within fifteen (15) days after the Agreement becomes effective, which is eight (8) days after Wise executes the Agreement, unless he revokes the Agreement pursuant to Paragraph 20.

Other than there payments, Wise acknowledges and agrees that he is not entitled to any other compensation, payment, or benefit of any type or description from the City.

2. **No Admission of Liability.** This Agreement and the payment made hereunder shall in no way be construed as an admission by the City that it has acted wrongfully with respect to Wise, or that Wise has any rights against it.

Wise understands and agrees that the consideration recited herein is accepted by him in full and final settlement and compromise of any claims, Wise may contend that he otherwise has, had, or may have against the Released Parties by reason of any act, omission, transaction, or event occurring up to and including the date of the Agreement.

3. **No Representations as to Tax Consequences.** Wise understands and agrees that the City has made no representations as to the tax consequences of the monies paid pursuant to Paragraph 1, above. Wise further understands and agrees that, to the extent any tax liability may now or hereafter become due and payable by him because of payment of any sums pursuant to this Agreement, such personal liability shall be his sole responsibility, and he shall pay any taxes, penalties or interest which may be determined to be due and payable by him. Moreover, Wise agrees to save and hold harmless the City in connection with any and all taxes, withholding taxes, penalties, interest and other costs that may be or become due and payable by him as a result of this Agreement and the payment made hereunder.

4. **Release of Claims.** For and in consideration of the promises in Paragraph 1, the sufficiency of which is hereby acknowledged, Wise agrees, represents, and promises as follows:

Wise, for himself, his heirs, and executors, irrevocably and unconditionally releases and forever discharges to the fullest extent permitted by law, individually and collectively, the City, and its present and former councilmembers, employees, representatives, agents, attorneys,

predecessors, successors, affiliates and assigns, any employee benefit plans sponsored or administered by them, insurers and all persons acting by, through, or in concert with them (all hereinafter collectively referred to as "Released Parties"), of and from any and all charges, claims, complaints, demands, liabilities, causes of action, losses, costs, or expenses of any kind whatsoever (including related attorneys' fees and costs), known or unknown, suspected or unsuspected, that Wise may now have, has ever had, or may have in the future against any one or all of the Released Parties by reason of any act, omission, transaction, or event occurring up to and including the date of the Agreement and that relate in any way to Wise's employment with the City, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, the Post Civil War Civil Rights Act (42 U.S.C. §§ 1981-88), the Equal Pay Act of 1963, The Occupational Safety and Health Act, the Family and Medical Leave Act of 1993, the Worker Adjustment and Retraining Notification Act of 1988, the Sarbanes-Oxley Act of 2002, the North Carolina Retaliatory Employment Discrimination Act (N.C. Gen. Stat. §§ 95-240 – 95-245), the North Carolina Wage & Hour Act (N.C. Gen. Stat. §§ 95-25.1 – 95-25.25), the Age Discrimination in Employment Act of 1967, the United States Constitution, and the North Carolina Constitution, all as amended, as well as any other federal, state, or local claim or law relating to wrongful discharge, emotional distress, employment discrimination, harassment, hostile work environment, retaliation, unpaid wages, or any claims for breach of contract or breach of any employment agreement. Wise does not waive any claims that may arise under the Age Discrimination in Employment Act after the date this Agreement is signed.

The Parties also understand and agree that this Agreement extinguishes all claims by Wise, whether known or unknown, foreseen or unforeseen, that arise from any act, omission,

transaction, or event occurring up to and including the date of the Agreement and that relate to Wise's employment with the City, and Wise expressly waives any rights or benefits under any law or judicial decision that provides in substance or effect that a general release does not extend to claims that the Parties do not know or suspect to exist in his favor at the time of executing the general release.

It is expressly understood and agreed by the Parties that this Agreement is in full accord, satisfaction, and discharge of any and all doubtful or disputed claims by Wise against the Released Parties, that arise from any act, omission, transaction, or event occurring up to and including the date of the Agreement and that relate to Wise's employment with the City, and this Agreement has been signed with the express intent of extinguishing all claims, obligations, actions, or causes of action as herein described.

Wise acknowledges that he is not entitled to any other monies from the Released Parties for any reason, other than the monies set forth in this Agreement, including compensatory damages, punitive damages, or attorneys' fees, costs, or disbursements, known or unknown, asserted or unasserted claims for lost or unpaid wages or severance benefits, claims for damages to reputation, claims for physical, mental, and personal injuries, and resulting emotional distress, pain, and suffering, as well as all other statutory claims, or common law claims, or contract claims, whether express, implied, oral, or written. Upon Wise's receipt of the monies set forth in this Agreement, Wise will have received all monies due to him from one or all of the Released Parties.

5. **No Representation as to Effect of Agreement.** Wise further acknowledges, represents and agrees (i) that he has been advised of his right to consult with an attorney of his choice before signing this Agreement; (ii) that he has been advised of his right to read, consider

and review this Agreement for a period of at least 21 days prior to his execution of this Agreement; and he does hereby waive this 21 day period and desires to execute this Agreement immediately without further delay; and (iii) that he has voluntarily and knowingly signed this Agreement in exchange for valuable consideration that he would not have otherwise received.

6. **Employee's Rights.** Wise understands and agrees that, notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended to and/or shall: (a) constitute an unlawful release or waiver of any of Wise's rights under any laws; or (b) prevent, impede, or interfere with Wise's ability or right to: (1) provide truthful testimony if under subpoena to do so; and (2) to respond as otherwise required and/or provided for by law. Notwithstanding anything to the contrary in any Paragraph of this Agreement, nothing in this Agreement is intended to be or shall be construed as a violation of any law. Wise also understands and agrees that, notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended to or shall prevent, impede, or interfere with Wise's ability or right to file any charge or complaint with, or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, and/or any other federal, state, or local governmental entity. However, in consideration for the Payment provided by the City in Paragraph 1 of this Agreement, Wise agrees to give up, release, discharge, and waive any right he has and/or may have to any victim-specific relief (including monetary relief) from the City for any charge, claim, or complaint filed by him or filed on his behalf by the Equal Employment Opportunity Commission and/or any other governmental agency. Wise does not give up, release, discharge and waive any right he has and/or may have to any relief (including monetary relief) for any claims that may arise based on events occurring after he signs this Agreement.

7. **Nondisparagement.** Wise agrees that he will not disparage or defame the City or any of the Released Parties, or the City's products, services, officers (in their capacity as officers of the City), employees (in their capacity as employees of the City), or business activities. Wise agrees that, for purposes of this provision, "disparage" means and includes, without limitation, making, publishing, releasing, disseminating, or causing the making, publication, release, or dissemination of, any written or verbal remark, statement, or other communication or information that is intended to, tends to, or does impugn, belittle, discredit, injure, or cast in a negative light the quality, character, reputation, competence, ability, or performance of the City or any of the Released Parties or any of the City's products, services, officers (in their capacity as officers of the City), employees (in their capacity as employees of the City), or business activities. This Agreement does not prevent Wise from providing truthful information in response to a lawfully issued subpoena, or to any state or federal agency with jurisdiction over Wise.

8. **Severability.** All provisions of this Agreement are severable, and if any of them is determined to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.

9. **Entire Agreement; Persons/Entities Bound by the Agreement.** This Agreement sets forth the entire understanding of the Parties to this Agreement. All prior negotiations are merged into this Agreement. All understandings and agreements are expressly set forth herein. No party has made any settlement, representation, warranty, or other commitment in connection with the issues addressed in this Agreement that has not been expressly set forth herein. No party has relied upon or been induced by any agreement,

representation, warranty, or other commitment from another party that has not been expressly set forth herein. This Agreement shall be binding upon and inure to the benefit of Wise and to the benefit of each of the Released Parties and their respective successors and assigns.

10. **Amendments.** No amendment, modification, termination, or waiver of all or any part of the Agreement shall be valid unless the same is in writing and signed by all parties hereto.

11. **No Waiver.** No failure or delay by any party to enforce any right specified by this Agreement will operate as a waiver of such right, nor will any single or partial exercise of a right preclude any further or later enforcement of the right.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of North Carolina.

13. **Liens.** Wise certifies that he is not a recipient of Medicare benefits and represents that he has incurred no medical bills reportable to or payable by Medicare related to her claims. Wise relieves the Released Parties of any responsibility for reimbursement of any liens against the proceeds of this settlement. This is to include any provider of medical benefits, Medicare benefits, workers' compensation benefits, insurance benefits, wage loss benefits, child support liens, or any and all other providers of benefits to Wise. The reimbursement for any such benefits paid will be the sole responsibility of Wise. The Released Parties will have no responsibility for reimbursement.

14. **Confidentiality.** Wise agrees that as a material inducement to all Parties to enter into this Agreement, Wise and his attorney agree to keep strictly confidential any matter pertaining to this Agreement, consideration paid, or the fact or terms of settlement negotiations, and agree that any matter pertaining to this Agreement shall not be disclosed to anyone by Wise or his attorney. As illustration, but without limitation, Wise and his attorney will not cause any

information to be published in any newspaper, periodical, journal, magazine, publication, radio or television station or in any electronic medium, including on the Internet, and if questioned regarding the case will respond with “no comment” or words to that effect or “the matter is resolved” or words to that effect. Wise and his attorney may disclose this Agreement where it is necessary to do so for legal, accounting, tax, or insurance purposes, but only if such person is made aware of this Confidentiality Clause and agrees to be bound to it. Wise and his attorney may not reveal the details of this Agreement in altered, disguised, sanitized, or redacted form such that the names of the Parties are altered, disguised, or omitted but the details of the settlement are otherwise revealed. Wise and his attorney agree not to release the details of this Agreement to the public in any form that would jeopardize the confidentiality of the terms of this Agreement. Wise and his attorney further agree not to release the details of this Agreement to the public in any form that would jeopardize the confidentiality of the terms of this Agreement except as may be required by law (including a valid request by any governmental entity or agency) or by Court Order or subpoena. Wise acknowledges the City’s obligation to report this settlement as required by law, that this Agreement is a public record, and that the City is obligated to allow an inspection/produce a copy of this Agreement, if requested, pursuant to N.C.G.S. §§132-1.3 and 132-6, or any other law. The production of this Agreement by the City, pursuant to a public record’s request, does not eliminate Wise and his attorney’s obligations under this or any other provisions of this Agreement, all of which will remain in full force and effect.

15. **Reference.** Wise will direct any reference requests to the City’s Director of Human Resources. The reference will be limited to Wise’s position held; dates of employment; and rate of pay.

16. **Capacity.** The Parties hereby warrant that each is competent to enter into this Agreement, and that no court or other tribunal of competent jurisdiction has found any of them to be incompetent or otherwise incapable of handling their business affairs or entering into a binding agreement or contract.

17. **Enforcement of Agreement.** Wise agrees that he will be responsible for reasonable expenses, including legal fees, incurred by the City for any enforcement of this Agreement, should that necessity arise.

18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the assigns, heirs, executors, and administrators of Wise.

19. **Additional Acknowledgements.** Wise acknowledges:

- I have read this Agreement, and I understand its legal and binding effect. I am knowingly and voluntarily executing this Agreement of my own free will.
- No other promises or agreements of any kind have been made to or with me by any person or entity to cause me to sign this Agreement.
- I have had the opportunity to seek, and the City has expressly advised me to consult with, an attorney and to seek legal counsel prior to signing this Agreement.

I understand that in signing this Agreement, I am releasing the Released Parties from any and all claims I may have against them that arise from any act, omission, transaction, or event occurring up to and including the date of the Agreement and that relate to my employment with the City.

20. **Period of Revocation.** BY HIS SIGNATURE BELOW, WISE UNDERSTANDS AND ACKNOWLEDGES THAT HE HAS THE RIGHT TO REVOKE THIS AGREEMENT FOR A PERIOD OF SEVEN (7) DAYS FOLLOWING HIS EXECUTION OF THIS AGREEMENT BY DELIVERING WRITTEN NOTICE OF SUCH REVOCATION TO THE CITY'S COUNSEL AT THE FOLLOWING ADDRESS: STEVEN A. ROWE, POYNER

SPRUILL LLP, 1151 FALLS ROAD, SUITE 1000, ROCKY MOUNT, NORTH CAROLINA 27804. WISE FURTHER ACKNOWLEDGES AND AGREES THAT UPON THE EXPIRATION OF THIS SEVEN (7) DAY REVOCATION PERIOD, THIS AGREEMENT SHALL BE FULLY VALID, EFFECTIVE AND ENFORCEABLE.


21. DAVID WISE ACKNOWLEDGES AND AGREES THAT HE HAS BEEN ADVISED THIS AGREEMENT IS A BINDING LEGAL DOCUMENT, AND THAT HE HAS HAD ADEQUATE TIME AND REASONABLE OPPORTUNITY TO REVIEW IT, AND THAT IN EXECUTING THE AGREEMENT HE HAS ACTED VOLUNTARILY AND HAS NOT RELIED UPON ANY REPRESENTATION MADE BY ANY OF THE RELEASED PARTIES OR THEIR REPRESENTATIVES REGARDING THIS AGREEMENT'S SUBJECT MATTER OR EFFECT.

AGREED AND UNDERSTOOD:



David Wise

CITY OF ROCKY MOUNT,
NORTH CAROLINA

By 
Name: Rochelle D. Small-Towey
Title: City Manager

STATE OF ^{PS} ILLINOIS

COUNTY OF Rock Island

I, a Notary Public of the County and State aforesaid, do hereby certify that David Wise, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 24 day of January, 2020.

Rebecca Stichter
Notary Public

My Commission Expires: Feb 15 2020

(SEAL)



STATE OF North Carolina

COUNTY OF Wake

I, a Notary Public for said County and State aforesaid, do hereby certify that Rochelle Small-Tony as City Manager of the City of Rocky Mount, North Carolina, personally appeared before me this day, acknowledging to me that he/she signed the foregoing document.

Witness my hand and official stamp or seal, this the 30 day of January, 2020.

Tanika D. Cooper
Notary Public

My Commission Expires: 7/29/2023

(SEAL)

