

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

JAMES RICHARDSON, individually,
MICHAEL HOWARD and NANCY HOWARD
his wife, both individually, and as Representatives
of a Class of all similarly situated others,

CASE NO. 2013 CA 400

Plaintiffs,

v.

CITY OF FRUITLAND PARK, FLORIDA,
a municipal corporation,

Defendant.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered between MICHAEL HOWARD and NANCY HOWARD, his wife, both individually, and as Representatives of a Class duly approved by the Court (the "Class Representatives") and JAMES RICHARDSON ("Jim Richardson"), and the CITY OF FRUITLAND PARK, FLORIDA, a municipal corporation (the "City"), this 21st day of January, 2014.

WHEREAS, the Class Representatives and James Richardson filed the above styled action in the Circuit Court of the Fifth Judicial Circuit, in and for Lake County, Florida, consisting of two counts. Count One, stated a claim for the violation of Title 42 U.S.C. § 1983, alleging a claim for first amendment retaliation and Count Two sought a declaratory judgment to declare police service fees and fire service fees ("Police and Fire Fees") imposed by the City invalid and establish a common fund; and

WHEREAS, the City removed the entire case to the United States District Court, Middle District of Florida, where, after Plaintiff filed its Motion to Remand, the City stipulated to Plaintiff's requested relief and the Court entered an order severing Count Two and remanding that matter back to the Circuit Court for the Fifth Judicial Circuit; and

WHEREAS, James Richardson and the City eventually settled Count One and all issues related to that matter have been resolved; and

WHEREAS, as to Count Two, on September 12, 2013, the Court entered an Order on Plaintiffs' Motion for Class Certification appointing the Howards as Class Representatives for a class defined as "all those City of Fruitland Park Utility Customers that have paid to the City police, fire or both, since the enactment of Ordinance 2009-014" ("the Class"); and

WHEREAS, the parties have arrived at a settlement agreement on behalf of the individuals and members of the Class to resolve all remaining issues as to Count Two.

NOW, THEREFORE, in consideration of the mutual covenants to be performed herein and for good and lawful consideration, the sufficiency of which is acknowledged by all parties, the Class Representatives and the City agree, covenant and stipulate as follows:

1. Common Fund. The City will establish a common fund in the amount of \$530,000.00 (the "Common Fund"), which will be held by the City and separately accounted for from other funds. The Common Fund shall be administered as follows:

A. All refunds paid to members of the Class, attorney fees, Class Representatives' fees, approved costs, other fees that may be sought by the Class Representatives or James Richardson, and the City's costs of postage and advertising as set forth in Section 3 below shall be paid from the Common Fund.

B. The City agrees to administer the Common Fund and bear the administrative cost of establishing the Fund, providing applications and the processing of refunds to members of the Class and other Court approved payments.

C. The creation, funding and administration of the Common Fund as set forth in this Agreement shall be the full extent of the City's responsibility, obligation and liability in this matter to members of the Class as the result of the issues asserted in the above styled cause.

2. Approval of Settlement Agreement and Award of Fees and Costs. Following the execution of this Agreement, the parties shall jointly file with the Court, a motion for approval of the Agreement. The Class Representatives and their counsel shall also submit an application with the Court for an award of attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. The City and its Commissioners agree it will not take a position either in support or in opposition of the amount or reasonableness of attorney's fees, Class Representatives' fees or such other fees sought to be paid from the Common Fund. The City agrees that in the consideration of the award of attorney's fees from the Common Fund, affidavits are admissible for the purpose of establishing the amount of attorney's fees and their reasonableness and further agrees that the benefit the litigation bestowed upon the Class includes the avoidance of future fees. Upon approval of the Settlement Agreement and the entry of an Order by the Court awarding attorney's fees, recoverable costs, Class Representatives' fees or such other fees to be paid from the Common Fund, the City shall pay these amounts from the Common Fund, within fifteen (15) days of the entry of the Order by the Court and notification by the Class Representatives that they will not appeal those determinations by the Court. The Plaintiffs do not waive or relinquish and the City does waive and relinquish any right to appeal the determination of the Court as to the award of

attorney's fees, recoverable costs, Class Representatives' fees or such other fees to be paid from the Common Fund that are ultimately awarded by the Court.

3. Application for Refund. Upon the Court's approval of this Agreement and the attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund, the City shall mail to its utility customers shown on Exhibit "A" less those who have opted out of the class as shown on Exhibit "B", either within the customer's utility bill or by separate mailing, an application for the refund of paid Police and Fire Fees. The form of the application to be mailed or otherwise provided to the members of the Class is attached to this Agreement as Exhibit "C". Additionally, the City shall publish, in a newspaper of general circulation within the City, a notice of the availability of refunds for the paid Police and Fire Fees and instructions as to how an application can be obtained. A copy of the form of the notice is attached to this Agreement as Exhibit "D". The members of the Class shall have thirty (30) days from the mailing of the application and from the publication of the notice to return their completed application to the City on behalf of the Class member that paid the Police and Fire Fees (the "Application Period"). Failure of a Class member to return a completed application to the City within the thirty (30) day Application Period shall be deemed as a waiver of a right to any refund for the payment of Police and Fire Fees. The application shall be returned to the City, who shall then verify that the applicant was a utility customer of the City during the period that the Police and Fire Fees were collected and actually paid the Police and Fire Fees. Upon verification that the member of the Class was a utility customer during the relevant time period and paid the Police and Fire Fees, the City shall refund the paid Police and Fire Fees to the Class member that filed the application, less that Class members' pro rata share of the Court awarded attorney's fees, recoverable costs, Class Representatives' fees and such

other fees sought to be paid from the Common Fund. The City shall provide a listing to the counsel for the Class Representative for all individuals that submitted an application who it was determined were not customers during the relevant time period or did not pay the Police and Fire Fees.

4. Payment of Refund. Upon verification that the applicant actually paid the Police and Fire Fees and following the final determination by the Court as to all attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund the City shall pay the refund to the Class member. The refunds shall be paid within sixty (60) days of verification by the City and final determination of the Court as to all attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. Each member of the Class will be paid the actual amount of Police and Fire Fees paid less the Class Member's pro rata share of the attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. Under this approach, each Class member who files a completed application within the Application Period will receive a refund of the amount of Police and Fire Fees paid less the Class member's share of the Court approved attorney's fees, recoverable costs, Class Representatives' fees and such other fees as related to the entire Common Fund Amount. By way of example, if the total of all amount of attorney's fees, recoverable costs, Class Representatives' fees and such other fees awarded by the Court equals \$286,200, then that amount represents fifty four (54%) percent of the Common Fund of \$530,000. Therefore, every Class member will be refunded the actual amount of Police and Fire Fees that they paid, reduced by fifty-four percent (54%) for their pro rata share of the attorney's fees, recoverable costs, Class Representatives' fees and such other fees sought to be paid from the Common Fund. For

purposes of this section, any utility account consisting of more than one person or entity (e.g. joint or husband and wife accounts) shall be considered a single Class member or utility customer.

5. Surplus of Common Fund. Any surplus of the Common Fund remaining after payment of refunds, approved attorney's fees, recoverable costs, Class Representatives' fees and such other fees as awarded by the Court, shall be returned to the City and utilized for the provision of fire services.

6. Repeal of Ordinance. The City agrees that within thirty (30) days of the approval of this Agreement by the Court that it will repeal Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010.

7. In consideration of the matters referenced in this Agreement, James Richardson and the Class Representatives, individually and on behalf of the Class, mutually agree that this Agreement, and the fulfillment of the conditions contained therein by the City, shall represent the full and complete satisfaction of any responsibility, obligation or requirement of the City relating to the Police and Fire Fees charged by the City as to the Class pursuant to Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010, and shall satisfy and discharge the City, including, but not limited to, its commissioners; officials; officers; directors; employees and agents, whether in their official or individual capacities; from all claims, causes of action, rights, demands, charges, complaints, grievances, or other suits whatsoever, whether in law or equity, as a result of any loss, known or unknown at this time, or which hereafter may become known, by the Class Representatives and the members of the Class, arising out of or related to, directly or indirectly, the fire and police fees charged by the City pursuant to Ordinance 2009-014, as amended by Ordinances 2010-005 and 2011-010.

8. The Court shall retain jurisdiction for the enforcement of this Agreement and the administration of the Common Fund. Upon disbursement of the refunds to members of the Class, payment of attorney's fees, recoverable costs, Class Representatives' fees and such other fees approved by the Court, the City shall file a report with the Court setting forth the payments that have been made from the Common Fund and also setting forth those applications which were received but which it was determined that they did not pay the fire and police fees or which filed applications were received outside of the Application Period. The City will then file a Motion with the Court to obtain approval for the closing of the Common Fund. Upon the filing of the report and entry of an Order by the Court closing the Common Fund, the Class Representatives agree to file a Notice of Voluntary Dismissal with Prejudice of the above styled action.

9. The City acknowledges the benefit the litigation bestowed upon the Class.

10. This Agreement shall be construed and governed in accordance with the laws of the State of Florida and of the United States of America.

11. The waiver by any party of a breach of any provision of this Agreement by another party shall not operate or be construed as a waiver of any subsequent breach of that or any other provision by said party.

12. This Agreement is intended to be the final and full expression of the settlement between the Class Representatives, both individually and on behalf of the Class, and the City, and all prior or collateral agreements are merged within. This Agreement may not be modified, amended, or superseded except by express written agreement of the parties, their heirs, successors in title or assigns to this Agreement and approved by the Court. If any portion of this Agreement is held to be without force and effect, the remainder of the Agreement shall be

effective unless there is a substantial failure of consideration due to the ineffectiveness of that portion of the Agreement.

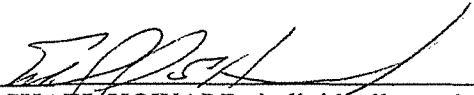
13. The Class Representatives and the City acknowledge that each has read this Agreement, has sought and received the advice of counsel, and understands the meaning of this Agreement. Further, the Class Representatives and the City each acknowledge that they and their counsel have suggested, or had the opportunity to suggest changes to the language of this Agreement, and therefore, any rule of interpretation that any ambiguity shall be construed against the drafter shall not apply in interpreting the provisions of this Agreement.

14. The Class Representatives and the City each represent that it is fully authorized to enter into this Agreement, that it has taken all necessary governmental, corporate and/or internal legal actions to duly approve the making and performance of the matters set forth in this Agreement, and that, except as set forth in this Agreement, no further governmental, corporate and/or other internal approval is necessary.

15. This Agreement shall become binding upon its execution, in two (2) counterpart originals, by all parties, with one fully executed original to be retained by each.

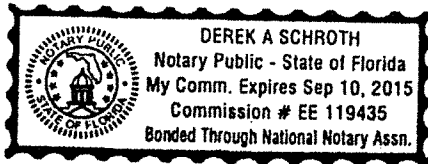
16. The parties acknowledge that this Agreement is a public record of the State of Florida.

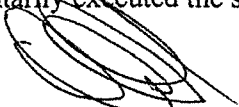
IN WITNESS WHEREOF, JAMES RICHARDSON, an individual, and MICHAEL HOWARD and NANCY HOWARD, his wife, both individually, and as Representatives of a Class duly approved by the Court of all similarly situated others, and the CITY OF FRUITLAND PARK, FLORIDA, a municipal corporation, have in duplicate original, signed this Agreement.


MICHAEL HOWARD, individually, and
as Representatives of a Class duly approved
by the Court of all similarly situated others

STATE OF FLORIDA
COUNTY OF LANE

BEFORE me, this 16th day of JANUARY, 2014, personally appeared MICHAEL HOWARD, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that he voluntarily executed the same.



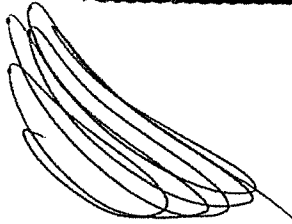

Printed Name Derek A. Schroth
Notary Public, State of Florida at Large
My Commission expires: 9/10/2015
Commission No. 119435


JAMES RICHARDSON

STATE OF FLORIDA
COUNTY OF

BEFORE me, this 14th day of January, 2014, personally appeared JAMES RICHARDSON, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that he voluntarily executed the same.





Ann R Blair
Printed Name
Ann R Blair
Notary Public, State of Florida at Large
My Commission expires: Apr. 9, 2017
Commission No. FF 006301

DEREK A. SCHROTH, ESQUIRE
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ATTORNEY FOR PLAINTIFFS

CITY OF FRUITLAND PARK,
FLORIDA

[Signature]

By: Mayor Chris Bell

STATE OF FLORIDA
COUNTY OF Lake

BEFORE me, this 21st day of January, 2014, personally appeared _____, as representative of the CITY OF FRUITLAND PARK, FLORIDA, who is personally known to me or who has produced _____ as identification, and who executed the foregoing Settlement Agreement and acknowledged to me that she/he voluntarily executed the same.

ESTHER B. LEWIN-COULSON
Printed Name

Notary Public, State of Florida at Large
My Commission expires: June 13, 2015
Commission No. EE098557

[Signature]

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ATTORNEYS FOR DEFENDANT,
CITY OF FRUITLAND PARK, FLORIDA

