Introduced by the Council President at the request of the Office of General Counsel:

**ORDINANCE 2016-438**

AN ORDINANCE APPROPRIATING $125,000.00 FROM THE GENERAL FUND – GSD TO PROVIDE FUNDS TO SETTLE A PENDING FOURTH JUDICIAL CIRCUIT STATE COURT LAWSUIT AGAINST THE CITY FOR DAMAGES CLAIMED TO BE IN EXCESS OF $700,000.00 STYLED PALMS PARTNERSHIP, LLC V. CITY OF JACKSONVILLE, AS INITIATED BY B.T. 16-091; PROVIDING FOR A CARRYOVER OF FUNDS TO FISCAL YEAR 2016-2017; APPROVING AND AUTHORIZING THE MAYOR, OR HIS DESIGNEE, AND THE CORPORATION SECRETARY TO EXECUTE AND DELIVER, FOR AND ON BEHALF OF THE CITY, THE SETTLEMENT AND RELEASE AGREEMENT BETWEEN PALMS PARTNERSHIP, LLC AND THE CITY IN THE CASE OF PALMS PARTNERSHIP, LLC VS. CITY OF JACKSONVILLE, CASE NO. 2012-CA-012382, IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA, AND SUCH DOCUMENTS AS ARE NECESSARY TO EFFECT SUCH SETTLEMENT; PROVIDING FOR CITY OVERSIGHT BY THE DEPARTMENT OF PARKS, RECREATION AND COMMUNITY SERVICES; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, on November 31, 2005, Palms Partnership, LLC (“the Palms” or “Palms”) and the City of Jacksonville (“the City” or “COJ”) entered into a Restaurant Management Agreement (the “RMA”) for the construction, operation, and management of a restaurant by the Palms on real property owned by COJ and located at 6359 Heckscher Drive, Jacksonville, Florida (the “Property”); and

**WHEREAS**, the RMA was amended five times, which among other things extended the deadline for the Palms to complete construction of the restaurant on the Property and begin operating it through March 1, 2010; and

**WHEREAS**, the Palms began construction of a restaurant building and related structures and facilities on the Property (the “Facility”); and

**WHEREAS**, Palms claims it expended in excess of $700,000 on such construction of the restaurant to the benefit of COJ; and

**WHEREAS**, COJ ultimately terminated the RMA by January 10, 2011, as COJ claimed the Palms failed to complete construction of the Facility and begin operations pursuant to the RMA; and

**WHEREAS**, the Parties corresponded after January 10, 2011 regarding the possibility of a new agreement under which Palms might operate the restaurant; and

**WHEREAS**, the Palms filed a lawsuit against the City on November 14, 2012, styled *The Palms Partnership, LLC v. City of Jacksonville*, in the Duval County Circuit Court, Case No. 2012-CA-012382 (the “Litigation”) claiming damages for the termination of the RMA and relating to construction of the Facility, including allegedly wrongfully inducing Palms to nearly complete construction, as well as unjust enrichment; and

**WHEREAS**, COJ filed a Counterclaim in the Litigation against the Palms seeking damages for its failure to perform under the RMA; and

**WHEREAS**, the Parties have disputed any wrongdoing or liability to each other; and

**WHEREAS**, the Parties wish to avoid the risk and uncertainty associated with further litigation and to compromise and completely resolve the Litigation without admitting or conceding liability, and they have negotiated a proposed agreement to do so, subject to necessary City Council approval; now, therefore,

**BE** **IT** **ORDAINED** by the Council of the City of Jacksonville:

**Section 1.** **Appropriation.** For the 2015-2016 fiscal year, within the City’s budget, there are hereby appropriated the indicated sum(s) from the account(s) listed in subsection (a) to the account(s) listed in subsection (b):

(B.T. 16-091 attached hereto as **Exhibit 1** and incorporated herein by this reference)

(a) Appropriated from:

See B.T. 16-091 $125,000

(b) Appropriated to:

See B.T. 16-091 $125,000

(c) Explanation of Appropriation

The appropriation described above is transferring $125,000.00 from General Fund - GSD Judgments, Claims and Losses Account (GCGA011CA-04939) to settle the Litigation.

**Section 2. Carryover.** The funds appropriated herein shall not lapse but shall carryover into fiscal year 2016-2017 to the extent necessary to complete the settlement herein approved.

**Section 3.** **Settlement Approved.** The Council hereby approves the proposed settlement of the lawsuit styled Palms Partnership, LLC vs. City of Jacksonville, Case No. 2012-CA-012382 in the Circuit Court for the Fourth Judicial Circuit, In and For Duval County, Florida, wherein the City is alleged to have breached an agreement for the development of Palms Fish Camp abutting the Trout River along Heckscher Drive, among other claims. The terms of the settlement provide for: payment by the City to the Plaintiff of $125,000 for settlement of the Litigation; Plaintiff’s dismissal of its claims and the City’s dismissal of its Counterclaim; and, the execution of a Settlement and Release Agreement, among other related terms.

**Section 4.** **Approval and Authorization.** There is hereby approved, and the Mayor, or his designee, and the Corporation Secretary are hereby authorized to execute and deliver, for and on behalf of the City, the Settlement and Release Agreement between the Plaintiff, Palms Partnership, LLC, and the City, in substantially the form attached hereto and incorporated herein as **Exhibit 2** (the “Settlement”)**,** and the General Counsel, or his designee, is hereby authorized to assist in preparation and execution of necessary collateral documents, such as a dismissal with prejudice, in furtherance of the Settlement.

**Section 5. Oversight.** The Department of Parks, Recreation and Community Services shall oversee the Settlement.

**Section 6.** **Effective Date.**  This ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor’s signature.

Form approved:

 /s/ James R. McCain, Jr.

Office of General Counsel

Legislation Prepared By: Michael B. Wedner