

FULL AND FINAL SETTLEMENT AND RELEASE OF CLAIMS

This Full and Final Settlement and Release of Claims ("Agreement") is made and entered into by and between **Jim Edison** (referred to as the "Employee") and the **City of Albuquerque** (referred to as the "City" or "Employer") (the Employee and Employer are collectively referred to as the "Parties").

WHEREAS, Employee was employed by the City of Albuquerque's Police Department as a Lieutenant until his termination on November 8, 2021 for alleged misconduct and just cause.

WHEREAS, Employee denies the alleged misconduct and just cause for termination and appealed his discharge to the City of Albuquerque Personnel Board in PB No. 21-32. In addition, Employee contested and appealed related disciplinary actions based on other allegations of misconduct made by the City in case Nos. PB 21-27, PB 21-30, and PB 21-31. Employee has further threatened to file suit against Employer for wrongful discharge and retaliation based on alleged violations of his civil rights, the New Mexico Whistleblower Protection Act, and other similar claims. ("pending lawsuit").

WHEREAS, Employer denies any and all allegations of unlawful conduct made by Employee, including but not limited to the allegations raised by Employee in the pending lawsuit.

WHEREAS, the Employee and the Employer have agreed that it is in the interest of the Parties to avoid further legal proceedings regarding the employer-employee relationship and to enter into this Agreement.

WHEREAS, the Parties now wish to enter into a full and final release of all claims the Employee has or may have had against Employer, whether such claims are contained within a formal charge, complaint or otherwise, and arise from or are related to Employee's employment with Employer.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by entering into this Agreement, the Parties state:

1. **"EFFECTIVE DATE"**: The Parties agree that, so long as both Parties sign this Agreement, the "Effective Date" is the date the last party signs the agreement.

2. CONSIDERATION.

A. Employer's Obligation:

1. The City shall withdraw the Final Decision to Discipline (PB 21-32), dated November 8, 2021, from Sylvester Stanley, Superintendent of Police Reform/DCAO to Employee terminating his employment with the Albuquerque Police Department. The fact of discipline shall be removed from Employee's disciplinary record including his retention card and shall not be used or considered in the future for aggravation or enhancement of future disciplinary actions which may be imposed on Employee, nor will the discipline be considered for progressive discipline purposes. Upon withdrawal of the November 8, 2021, Final Decision to Discipline, Employee shall be reinstated to his employment at the rank of Lieutenant retroactively to November 8, 2021, with full backpay and benefits, including any increases based on the applicable collective bargaining agreement between the City and the Albuquerque Police Officers Association. The parties further agree that no Internal Affairs investigations or discipline will result from any conduct or failure to act that occurred prior to the Effective Date of this Agreement.

2. The disciplinary actions appealed to the Personnel Board in PB 21-30 shall be withdrawn and removed from Employee's disciplinary record and his retention card. This suspension shall not be used or considered in the future for aggravation or enhancement of future disciplinary actions which may be imposed on Employee, nor will the discipline be considered for progressive discipline purposes.

3. The disciplinary actions appealed to the Personnel Board in PB 21-27, and PB 21-31 shall be reduced to a single disciplinary suspension of Ninety-six (96) hours with sixteen hours held in abeyance for a period of six months. The disciplinary actions on which those appeals are based shall be withdrawn and a single Final Decision to Discipline will be issued. Discipline shall not be based on untruthfulness or violations of the law. The hours held in abeyance will be withdrawn so long as Employee is not subject to discipline during the six-month abeyance period. This suspension nor the hours held in abeyance shall not be used or considered in the future for aggravation or enhancement of future disciplinary actions which may be imposed on Employee, nor will the discipline be considered for progressive discipline purposes.

4. The City shall pay Employee, or on behalf of Employee, consideration as detailed in subsection (a) and (b) below. This amount is referred to herein as the "Settlement Proceeds". The Settlement Proceeds are in full and complete settlement and release of any and all claims of the Employee against the City that may exist, known or unknown, as of the Effective Date of this Agreement, including those implicit in the various Personnel Board appeals filed on behalf of Employee and the pending lawsuit contemplated by Employee. Employee will not seek anything further from the City for any reason whatsoever for any events preceding the Effective Date outside of those as agreed to in this Agreement. Employee understands, acknowledges, and agrees that he would not otherwise be entitled to the payments made under this Agreement were it not for the covenants, promises, and releases set forth in this Agreement:

a. **Back Pay.** The City shall pay Employee his wages and benefits from November 8, 2021, to the date of his reinstatement as if his employment had not been terminated, subject to the eighty (80) hour loss of pay for the suspension described in Paragraph 2, above. The eighty (80) hours of suspension shall be paid at 2021 Lieutenant hourly rate of pay, to be spread out over two (2) pay periods to protect PERA rights. Payment shall be made through the normal payroll processes, and shall be subject to all statutory withholdings and deductions, including but not limited to the employer and employee PERA contributions. The payment shall be reported on United States Internal Revenue Service on Form W-2 as required by law.

b. **Cash Payment.** In addition to the Back Pay amount, the City shall pay Employee an amount equal to \$ 20,000.00 (Twenty Thousand Dollars and zero cents). This amount is referred to as the "Cash Payment". The Cash Payment shall be paid within fifteen (15) calendar days of the Effective Date and shall be made payable to Tim White, as attorney for Jim Edison. Included in the Cash Payment are any and all damages, awards, and other compensation payable to Employee for the alleged violation of his civil rights and the Whistleblower Protection Act, or any other cause of action possibly applicable to Employee's claims, including claims for attorney's fees and costs, which are Employee's sole obligation. The Cash Payment shall be reported on United States Internal Revenue Service Form 1099, as required by law. The City makes no representations, takes no position, and assumes no responsibility with respect to the taxable consequences of the Settlement Payment. Employee acknowledges he is responsible for and will pay any tax consequences determined by any government tax agency or authority resulting from any payments arising under this Agreement. Employee shall pay for the defense of, including attorney's fees, costs and any other expenses, any claim asserted against the Released Parties (defined below) relating to the taxable consequences of the settlement or for unpaid taxes, withholdings, penalties or interest, and shall indemnify and hold the Released Parties harmless from and against any such claims. Employee represents and warrants that neither the City, nor its attorneys, nor anyone affiliated with the City has made any representations regarding the taxable consequences of any payments arising out of this Agreement and that Employee has not relied upon any such representation in entering into this Agreement.

Employee understands, acknowledges, and agrees that in the event the Internal Revenue Service, or any other governmental entity, including but not limited to the State of New Mexico, or any court or other tribunal of competent jurisdiction, alleges that any or all of the payments made under the Agreement constitutes income for which any taxes remain due and owing, or that additional deductions should have been taken out for the benefit of Employee, that Employee, shall be responsible for the payment of such taxes or for the payment of any applicable interest or penalties. Employee further agrees to indemnify the City for any taxes due and owing with respect to any payment arising out of this Agreement, as well as any interest, costs, expenses, fees, including all reasonable attorneys' fees, penalties, or other payments which may be incurred as a result of an allegation that any taxes are due and owing with respect to any monies paid by the City to Employee. In the event it is ultimately determined that any monies are due and owing with respect any payment arising from this Agreement, the validity of this Agreement shall not be affected in any way.

5. The City will not refer, or will retract if already referred, any allegations of misconduct contained in the disciplinary actions on appeal in PB 21-27, PB 21-30, PB 21-31, and PB 21-32.

B. Employee's Obligation:

1. Within thirty (30) days of the Effective Date of this agreement, Employee shall withdraw any pending formal or informal charges, claims, grievances, arbitrations, or litigation and hereby dismisses, abandons, and forever renounces any and all claims, cross-claims, or counterclaims of any nature arising from, or in any way related to the employee-employer relationship and matters specific to this Agreement as well as any other claims he has or might have arising prior to the Effective Date, including but not limited to the pending lawsuit and the Final Decision to Discipline issued pursuant to Section 2(A)(3), above, and he shall not permit any other person to pursue any such claims on his behalf. Furthermore, Employee shall take no action to attempt to revive, reinstate, or otherwise refile any claims, cross-claims, or counterclaims of any nature arising from, or in any way related to the employee-employer relationship or relating to any other matter released in this Agreement.

2. So long as he continues to be employed by the Department, by no later than November 18, 2022, Employee will voluntarily and irrevocably demote to the rank of Sergeant or to Patrol Officer (at his discretion), in the Albuquerque Police Department. The parties agree, in the absence of objection by APOA that upon Employee's voluntary demotion his seniority will be based upon the date of his initial promotion to the Sergeant rank, or to the date of his initial hire if he demotes to Patrol Officer. After the Effective Date of this Agreement, Employee will not be eligible for promotion to any rank above the sergeant rank. Employee will be allowed to test for discretionary assignments within his rank, and for temporary upgrade assignments.

C. Other Consideration:

1. Upon Employee's reinstatement, his post and shift assignments as Lieutenant will be at the sole and exclusive discretion of the Employer and will not be subject to grievance or challenge. Employee will first be offered his choice of open positions consistent with the terms of the CBA. Employee's preferences will be given good faith consideration by the City, but will not be binding. Such assignments will be subject to change upon post and shift assignment bidding processes as allowed by the applicable collective bargaining agreement. Provided however, the assignments made by the Employer will not be made for punitive or retaliatory reasons.

2. The parties acknowledge City's intent to pursue an independent audit of Employee's pay records for the period of February 2020 through May 21, 2021, to determine whether his claims for overtime were consistent with law, Collective Bargaining Agreement and APD Policy, and whether they are properly supported by the facts. Employee will be given notice of the initiation of the audit, which will be completed within a reasonable time and without undue delay no later than November 1, 2022. Employee will be provided the audit report following its completion. In the event that the audit determines that Employee was overpaid, the City will first confer with Employee for reimbursement and may thereafter pursue collection of overpaid amounts through appropriate judicial processes. If the audit finds that Employee was underpaid then Employer will pay as required by the CBA and law. Employee retains all rights to deny the audit findings and to oppose reimbursement for any reason. This agreement shall not operate to release the City's claim for reimbursement nor to limit Employee's defenses.

3. In the event that the New Mexico Department of Workforce Solutions seeks reimbursement for any alleged possible overpayment of any unemployment compensation benefits paid to Employee based upon the payment of back pay to Employee pursuant to this agreement, Employee shall be solely responsible for such reimbursement. Employee further agrees to defend and indemnify Employer in the event Employer is made liable for such reimbursement. Additionally, it is agreed that the Employee was not physically employed by Employer between the date of termination, November 8, 2021, and the date he is reinstated per the terms of this Agreement.

3. RELEASE BY EMPLOYEE. For and in consideration of this Agreement, Employee, for himself, his spouse, heirs, successors, and assigns, hereby releases and discharges the City, its successors, assigns, agents, representatives, attorneys, insurers, its past and present directors, officers, shareholders, members, past and present employees, and any and all other persons, firms, or corporations who are or might be liable through the City (the "Releasees" or "Released Parties"), from any and all claims, actions, causes of action, damages, demands, loss of service, expenses, wages, or compensation of any kind that the Employee may have (hereinafter, "Claims"), whether

such Claims are known or unknown, arising from the beginning of time to the Effective Date of this Agreement. The Claims released by this Agreement include, but are not limited to, any and all Claims arising out of or relating to the statements, actions, or omissions of the City, all alleged Claims for unlawful discrimination, harassment, retaliation, or reprisal, or other alleged unlawful practices arising under any federal, state, or local statute, ordinance, or regulation, or common law, including, without limitation: Claims under Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans With Disabilities Act; the Employee Retirement Income Security Act; the Equal Pay Act; the Fair Credit Reporting Act; the Fair Labor Standards Act; the Occupational Safety and Health Act; the New Mexico wage laws; the New Mexico Human Rights Act, 1978 NMSA 28-1-1 *et seq.*; the Fair Pay for Women Act, 1978 NMSA 28-23-1, *et seq.*; the Whistleblower Protection Act, 1978 NMSA 10-16C-1 *et seq.*; the New Mexico Civil Rights Act, 1978 NMSA 41-4A-1, *et seq.*; the Family and Medical Leave Act; the City of Albuquerque Merit System Ordinance, ROA 1994 3-1-1 *et seq.*; the City of Albuquerque Labor-Management Relations Ordinance, ROA 1994 3-2-1 *et seq.*; the City of Albuquerque's Administrative Instructions; the City of Albuquerque Personnel Rules and Regulations; any similar state laws or statutes and all alleged Claims for: wrongful discharge; breach of contract; breach of implied contract; failure to keep any promise; breach of a covenant of good faith and fair dealing; breach of fiduciary duty; estoppel; defamation; infliction of emotional distress; fraud; misrepresentation; negligence; harassment; retaliation; reprisal; constructive discharge; invasion of privacy; interference with contractual or business relationships; any other wrongful employment practices; or violation of any other principle of common law. This also includes any alleged Claims for damages of: emotional distress; past, present or future mental injuries; past, present, or future employment; compensation of any kind, including, but not limited to, salary, wages, vacation pay, Public Employee Retirement Association (PERA) contributions; back pay; front pay; reinstatement; other equitable relief; compensatory damages; damages for alleged personal injury; liquidated damages; punitive damages; attorneys' fees; costs; interest; or any other Claims for damages relating to Employees' employment with the City, and all Claims for damages relating, in any way, to the facts underlying any grievance, charge or complaint or lawsuit.

4. ACKNOWLEDGMENT OF RIGHTS AND WAIVER OF CLAIMS. All Parties acknowledge that this Agreement does not limit any party's right, where applicable, to file or participate in an investigative proceeding of any federal, state, or local governmental agency as related to the employer-employment relationship of Employees and the Employer. To the extent permitted by law, Employee agrees that if any administrative claim is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies.

5. CONFIDENTIALITY. The Parties agree that this Agreement is subject to the confidentiality and disclosure requirements of City of Albuquerque Code of Ordinances "(COA Ordinances)", Section 2-8-2-11. The Parties understand that this document is subject to production under the New Mexico Inspection of Public Records Act ("IPRA") should a request be made. Notwithstanding, the Parties agree that no publicity shall be given to this Settlement Agreement and that neither will disclose the fact of settlement, the terms and conditions of settlement, the allegations made by the parties, the factual basis for settlement, or any other matter related to the

litigation and its settlement aside from the disclosure available under the COA Ordinances and IPRA. In the event that inquiry is made by anyone, including but not limited to news media or social media, the Parties agree that only the following report shall be provided: "The parties have amicably resolved the litigation and have agreed to the mutual dismissal of all claims against each other."

6. NO DISPARAGEMENT

Employee and Employer's officials, officers, and directors mutually and voluntarily agree that they will not disparage, make false statements about, or otherwise defame or slander one another concerning the incident from which Releasors' claim arises. Nothing herein shall prevent either party or both from making truthful statements in connection with any legal proceeding or in any official governmental investigation. This provision is subject to enforcement pursuant to applicable law.

7. ADDITIONAL PROVISIONS.

- A. **Ownership of Claims.** Employee represents and warrants that: (i) he is the sole and lawful owner of all rights, title, and interests in and to all released matters, claims and demands referred to herein; (ii) there has been no assignment or other transfer of any interest in such matter, claims or demands which Employee may have against the City in particular but not limited to any portion of any claim which is waived, released, or discharged herein, (iii) does not have or know of any outstanding claims other than those released herein and (iv) does not reserve any claims against the City or any of the Releasees from the effect of this Agreement. If any party, including Employee, brings any related action on any matters, claims, or demands released herein, against any Releasee, Employee shall indemnify said Releasee for any related judgment, costs, or fees, including attorney's fees.
- B. **No Other Actions.** Employee affirms that he has no other pending lawsuits, charges, administrative proceedings, or other claims of any nature whatsoever against the City in any state or federal court, or before any state or federal agency or any other body.
- C. **No Admission of Liability by Parties.** It is understood and agreed that this Agreement is a compromise settlement of the disputed formal or informal allegations, claims, grievances or arbitrations or litigation, claims, cross-claims, or counterclaims of any nature. This Agreement is not to be construed as an admission of any form of liability, fault, or wrongdoing on the part of the Parties, such liability, fault, or wrongdoing being expressly denied.
- D. **Term of Agreement.** This Agreement shall not terminate and all provisions of this Agreement shall remain in full force and effect for the life of the Parties and shall be binding on their estate, their heirs, and their assigns.

- E. **Entire Agreement.** The Parties agree that all the terms of this Agreement are contained in this document, that no statements or inducements have been made contrary to or in addition to the statements herein, that the terms hereof are binding on and enforceable for the benefit of the Parties, that the Agreement shall be deemed to have been drafted equally by all Parties, and that the provisions of this Agreement are severable, so that if any paragraph of this Agreement is determined to be unenforceable, the other paragraphs shall remain valid and fully enforceable.
- F. **Governing Law and Jurisdiction.** Regardless of where this Agreement is executed or performed, this Agreement shall be construed in accordance with and governed by the laws of the State of New Mexico, without regard to conflicts of laws principles. The Parties agree and consent to the jurisdiction of the courts of the State of New Mexico. The Parties further agree that the venue for any litigation that may arise from this Agreement is the Second Judicial District Court of New Mexico, Bernalillo County, located in Albuquerque, New Mexico.
- G. **Counterparts.** This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, all of which together shall constitute one and the same instrument.
- H. **Compliance with Terms and Non-waiver.** The failure to insist upon compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.
- I. **No Precedent.** This matter is unique; this Agreement shall not be used as precedent or constitute past practice for any other matter. The Parties hereto acknowledge that this Agreement, the compromise and settlement evidenced thereby, and any evidence relating thereto, each and all: (i) shall never be admissible as evidence against the persons herein released in any present or future suit, claims or proceeding of any nature, except as necessary to enforce rights granted pursuant to this Agreement and the instruments, documents and agreements referenced herein; (ii) but may be asserted by and introduced as evidence for the persons hereby released as an absolute and final defense and bar to any claim released herein in any present or future suit or proceeding of any nature. This relates solely to enforcing the Agreement and not to any claim either party might have against the other in the future.
- J. **Implementation.** The Parties shall sign any documents and perform any other actions in the future that are needed to implement this Agreement.
- K. **Complete and Binding Agreement.** The terms of this Agreement are contractual and not a mere recital. All agreements and understandings between the Parties are expressed in

this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties named herein, their legal representatives, successors and assigns.

L. **Modification.** This Agreement is not subject to any modification, waiver, or addition that is made orally. This Agreement is subject to modification, waiver, or addition only by means of a writing signed by each of the Parties.

M. **Voluntary and Knowing.** The Parties agree that this Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

7. **FULL OPPORTUNITY TO OBTAIN LEGAL ADVICE.** By signing this Agreement, the Parties acknowledge that they each have been represented by an attorney and counselor and have had ample opportunity to consult with their attorneys, and they are settling with and releasing the Parties released herein voluntarily after due and careful consideration of all relevant matters. The Parties further acknowledge that no representations or statements by the Parties, not reflected herein, have influenced them to any extent in entering into this Agreement.

IN WITNESS WHEREOF, the Parties hereto, personally or by their authorized representatives, have subscribed to and signed this Agreement as of the day and year first above written.

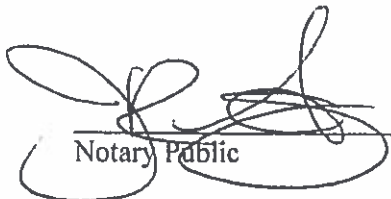
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Jim Edison

Date: JUNE 1, 2022

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

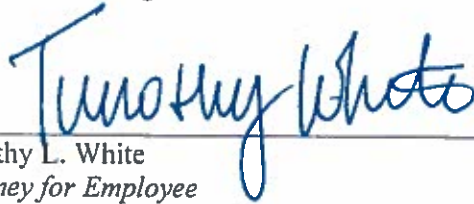
The foregoing instrument was acknowledged before me this 1st day of JUNE, 2022, by Jim Edison.


Notary Public

STATE OF NEW MEXICO
NOTARY PUBLIC
J R ALROY
COMMISSION NUMBER 1117564
EXPIRATION DATE 04-28-2025

My commission expires 4/28/25

Approved as to legal form:


Timothy L. White
Attorney for Employee

Date: June 1, 2022

SIGNATURES CONTINUE ON NEXT PAGE
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CITY OF ALBUQUERQUE

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5/22/2022 | 3:17 PM MDT

DocuSigned by:

Lawrence Rael

By:

D0029F0F78E649F

Lawrence Rael

Chief Administrative Officer (Acting)

Date: 6/2/2022 | 4:03 PM MDT

Recommended by:

DocuSigned by:

Anthony Romero

1AF67676E1044AC

Anthony Romero, Director

Human Resources Department

Date: 5/21/2022 | 5:54 PM MDT

Recommended by:

DocuSigned by:

Harold Medina

AD67103A13233EA

Harold Medina, Chief

Police Department

Date: 5/20/2022 | 9:36 PM MDT

Recommended by:

DocuSigned by:

John D'Amato

60EABD224EE341E

John D,Amato

On behalf of APOA

Date: 5/20/2022 | 9:36 AM MDT

Approved as to Legal Form:

DocuSigned by:

E. Justin Pennington

10DE06AC10A3429

E. Justin Pennington, Assistant City Attorney

Date: 5/19/2022 | 4:08 PM MDT