

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between Michelle Benedict, Thuha Tran, Debra Kelley, Tanna Bennett, Patricia Sanchez, Mary Dunham, Roberta Blea (“Plaintiffs”) and others similarly situated, who opted into the Collective Action (“Class Members”) and the City of Albuquerque (“City”) (the Plaintiffs and Class Members, and the City are collectively referred to as the “Parties”).

WHEREAS, all Class Members are current and former graded female employees of the City who were paid less than men for the same work from November 28, 2016 to the present, excluding police officers, police service aides, cadets in the Albuquerque Police Academy, those persons employed with the Albuquerque Fire Department, and those current or former City employees who opted into the collective action in *Pino et. al. v. City of Albuquerque*, Case No. D-202-CV-2018-03591);

WHEREAS, the Plaintiffs filed a Collective Action Complaint and Individual Claims for Violations of the Fair Pay for Women Act, Case No. D-202-CV-2022-07164 (the “Complaint”);

WHEREAS, the Plaintiffs have authority to enter into this Agreement and bind the Class Members;

WHEREAS, the Plaintiffs and Class Members are bound by the Settlement Agreement in this case;

WHEREAS, the City denies any and all allegations of unlawful conduct in all matters related to the Plaintiffs’ and Class Members’ claims in the Complaint;

WHEREAS, the Plaintiffs and the City have agreed that it is in the interest of the Parties to avoid further legal proceedings regarding the allegations in the Complaint and to enter into this Agreement. The Parties also wish to enter into a full and final release of all claims the Plaintiffs and Class Members have or may have had against the City, for claims in the Complaint, whether such claims have been brought or identified at this time, and which arise from or are related to the claims in the Complaint as further described herein;

WHEREAS, Plaintiffs and the City have engaged in discovery and are well acquainted with relevant facts;

WHEREAS, Plaintiffs have thoroughly analyzed the facts and the law and have determined that a class settlement with the City as set forth in this Agreement is in the best interests of the Plaintiffs and the Class Members;

WHEREAS, the City has concluded that it is in the best interest of the City to agree to enter into this Agreement in order to avoid the expense and inconvenience of protracted litigation;

WHEREAS, arms-length settlement negotiations between the Parties have taken place resulting in this Agreement which embodies all the terms and conditions of the settlement between City and the Plaintiffs and Class Members, subject to the approval of the Court;

WHEREAS, the backpay, back retirement benefits, and retirement benefits to be provided to Plaintiffs and Class Members, as further described in this Agreement, are based upon information provided by the City to Class Counsel and Plaintiffs' experts, Baca & Howard, P.C., who have relied on such information in calculating the back pay for Plaintiffs and Class Members;

WHEREAS, all payments made by the City to Plaintiffs and Class Members are for claims of pay discrimination due to sex;

WHEREAS, Class Counsel are the Law Office of Alexandra Freedman Smith, LLC (Alexandra Freedman Smith) and Freedman Boyd Hollander & Goldberg, P.A. (David A. Freedman).

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:

I. **"EFFECTIVE DATE"**: The Parties agree that, so long as the Parties, through their counsel, sign this Agreement, the "Effective Date" is the date the last party signs the Agreement, unless otherwise ordered by the Court.

II. CONSIDERATION.

A. Employer's Obligation:

1. The City shall pay \$10,930,003.00 in consideration for Plaintiffs' and Class Members' claimed back pay from November 28, 2016 to December 31, 2023, attorneys' fees and taxes thereon. In addition, the City agrees to pay the amount needed to compensate the Plaintiffs and Class Members for their back pay from January 1, 2024 until the date of court approval of this Agreement which is currently unknown ("Settlement Fund"). The amount of back pay to which each Plaintiff and Class Member is entitled is the difference between the amount they were paid and the amount they should have been paid had they earned the same rate of base pay as the highest paid male with the same job description between November 28, 2016 and the present. In the event the City has provided incorrect data to Class Counsel regarding back pay for any Plaintiff or Class Member which has led to a calculation of back pay that is less than the amount of the back pay to which the Class Member is entitled, the City will make up the difference, however, any notice of such incorrect data resulting in a miscalculation must be provided to the City prior to the date the Court enters a final Order of Dismissal as noted below. Any such amount is in addition to the Settlement Fund.

The Settlement Fund will be distributed as follows:

Plaintiffs and Class Members or their heirs or estates will be paid via a lump sum payment, with no related withholdings (the "Lump Sum Payment(s)"). This Lump Sum Payment(s) shall be reported on Internal Revenue Service Form 1099-MISC with the lump sum amount in Box 3. The City shall provide the 1099-MISC forms to the Plaintiffs and Class Members. The Lump Sum Payment(s) will be distributed by Class Counsel as described in the Plan of Distribution herein.

2. Additional consideration:

a. Retired Class Members: The City will pay all money due to the Public Employee Retirement Association of New Mexico (hereinafter "PERA") to ensure that each retired Class Member or their heirs and/or estates is eligible to receive the retirement benefits they would have received had they made the same base pay as the highest paid male who held the same job description from November 28, 2016 to the date they retired, including both the Employee and Employer portions, and any penalty or interest as required by PERA. The City will make contributions to PERA as determined and calculated by PERA to be required for retired class members to receive back and future retirement benefits. PERA has represented to the parties that it will provide a lump sum payment to each retired Class Member for adjusted back retirement benefits. These back retirement benefits have been represented by PERA as the difference between the amount of retirement benefits each Class Member should have received had their highest three years between November 28, 2016 and the date of retirement been the same base pay rate as the highest paid male with the same job description and the amount of retirement benefits actually paid to the Class Member.

b. Non-Retired Class Members: If any Plaintiffs or Class Members currently employed with the City retire within thirty-six months of the date of the settlement, the City will pay the necessary contributions to PERA (including both the Employee and Employer portions and any penalty or interest as required by PERA) so that they are eligible to receive the retirement benefits for their highest thirty-six consecutive months that they would have received had they been paid the same base pay rate as the highest paid male who held the same job description from November 28, 2016 to the date they retired.

c. The City warrants that it has confirmed with PERA that PERA will provide all retirement benefits and back retirement benefits as described in this Agreement. The City shall provide Class Counsel, in a form acceptable to them, an acknowledgment by the PERA that it has reviewed the terms of this Agreement with respect to retiree benefits and agrees that it will calculate and provide such benefits, subject to the City making the payments to the PERA as required above.

d. The City will pay Class Counsel's actual costs, up to \$180,000.00 including the cost of administering the settlement. The final amount of such costs will be provided by Class Counsel to the City with supporting documentation. If the amount of costs is less than \$180,000.00, Class Counsel will refund the difference between the actual costs and the \$180,000 to the City.

B. Plaintiffs' and Class Members' Obligations:

1. Prior to any settlement funds being distributed, Plaintiffs and Class Members, through Class Counsel, shall provide the City the back pay amounts to be distributed to Plaintiffs and Class Members from the Settlement Fund to enable the City to account for any PERA related contributions required under this Agreement.

2. The Plaintiffs agree that neither they nor anyone on their behalf will make any negative or disparaging comments to the media or through social media platforms about this case, the settlement, or the terms of the settlement; nor will Plaintiffs publicly criticize or undermine any public characterizations of the settlement made by the City so long as the City's Executive Branch, including but not limited to the Mayor's Office, makes no disparaging or negative comments regarding the Plaintiffs, Class Members, or Class Counsel.

3. Plaintiffs, on behalf of themselves and Class Members, shall cause the Complaint in its entirety to be dismissed with prejudice within 30 days after the Court has concluded its supervision of this Agreement pursuant to paragraph V.A.2. of this Agreement.

4. Plaintiffs and Class Members shall withdraw any pending formal or informal charges, claims, grievances, arbitrations, or litigation and hereby dismiss, abandon, and forever renounce any and all claims, cross-claims, or counterclaims of any nature arising from, or in any way related to the claims in the Complaint, and shall not permit any other person to pursue any such claims on their behalf. Furthermore, Plaintiffs and Class Members 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 claims in the Complaint and/or the Claims, as fully described in the Release by Employees, herein.

5. The City and Plaintiffs and Class Members shall execute any applications, affidavits, requests, or similar documents necessary to effect the terms of this Agreement.

III. CLASS CERTIFICATION: This case has been certified as a collective action and the City agrees it will not move to decertify the collective action.

IV. NOTICE TO CLASS: A Notice of Settlement shall be sent to Class Members by Class Counsel in the form attached hereto as Attachment B. The Notice shall be sent by First Class Mail to the last known address of the Class Members. In the event such Notice is returned as undeliverable, Class Counsel shall take reasonable measures to determine any new or additional address of each Class Member whose Notice has been returned and resend the Notice where possible.

The City shall post the Notice of Settlement in a conspicuous place(s) in each department, office, or place of business where female City employees work.

V. ADDITIONAL PROVISIONS:

A. This Agreement is subject to and conditioned on the approval of this Agreement by the Court. Such order and judgment shall:

1. Determine that this Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class Members who opt into the lawsuit;

2. Award attorneys' fees, taxes on such fees, and costs and administrative expenses in excess of the \$180,000.00 the City agrees to pay pursuant to paragraph II.A.2.e of this Agreement, to be paid out of the Settlement Fund of \$10,930,003.00.

3. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including the City, Plaintiffs and Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of all the Parties for up to one year after the entry of an Order by the Court finally approving the settlement; and

B. The Parties will cooperate in good faith and take all necessary and appropriate steps to obtain approval of this Agreement, and dismissal of the Complaint.

C. Upon approval by the Court of this Agreement, the City shall, within ten (10) working days, pay into the Benedict Settlement Trust the Settlement Fund of \$10,930,003.00.

D. This Agreement does not settle or compromise any claims other than those released in paragraph IX, below; and such release does not apply and has no effect on individuals who are not Class Members.

E. Class Counsel, with the assistance of an outside administrator and/or accountant, shall implement the terms of this Agreement with respect to the distribution of the Settlement Fund to Plaintiffs and Class Members. Payment to the outside administrator and/or accountant shall be reimbursable costs incurred by Class Counsel.

F. If this Agreement is not finally approved by the Court, the Agreement is null and void and the litigation in this case shall resume as though no agreement had been entered into.

V. ATTORNEYS' FEES

Plaintiffs will request a fee of \$1,750,000 from the Settlement Fund which is 16% of the Settlement Fund, as well as gross receipts tax on the fee in the amount of \$137,813.00 will be allocated for payment of Plaintiffs' attorneys' fees and New Mexico gross receipts tax on

Plaintiffs' attorneys' fees; provided however, that attorneys' fees and taxes thereon shall not exceed an amount that will reduce the aggregate amount of back pay for Plaintiffs and Class Members from November 28, 2016 to December 31, 2023, as calculated by Baca & Howard, P.C., the accountants employed by Class Counsel to calculate Plaintiffs' Class Members' back pay.

The City agrees that it will not contest Class Counsel's request for attorneys' fees, gross receipts tax as such funds will be distributed from the \$10,930,003.00 Settlement Fund.

VI. UNCLAIMED FUNDS

Any backpay amounts forfeited or not claimed pursuant to the Plan of Distribution, if the aggregated amount is in excess of \$5,000, shall be distributed pursuant to the Rules of Civil Procedure 1-023G, as the Court shall provide. In the event the aggregated amount not claimed is less than \$5,000, then it shall be returned to the City.

VII. PLAN OF DISTRIBUTION: If the Court grants final approval of the Agreement, within ten (10) days of such final approval, the City will deposit the Settlement Fund and costs into the Benedict Settlement Trust. Once the funds are available, Plaintiffs and Class Members may personally pick up their checks from 8:00 am- 5:30 pm Monday-Friday as further provided below, at:

Law Office of Alexandra Freedman Smith
925 Luna Circle NW
Albuquerque, NM 87102
(505) 200-2331
benedict@smith-law-nm.com

Plaintiffs and Class Members must show a driver's license or other valid picture ID and must provide a signature to pick up their checks. In addition, if such Plaintiffs and Class Members would rather receive their settlement check by mail, they must inform Class Counsel by calling (505) 200-2331 or emailing at benedict@smith-law-nm.com.

Until the Court finally approves the Agreement, the Settlement Fund is deposited into the Benedict Settlement Trust, and provisions are made to distribute settlement checks, no date for providing settlement checks to Plaintiffs and Class Members can be set. Therefore, Plaintiffs and Class Members shall call (505) 200-2331 or email at benedict@smith-law-nm.com before they come to pick up their checks. In the event certain Plaintiffs or Class Members do not pick up their checks or request that checks be mailed to them, Class Counsel shall take reasonable measures to locate these Class Members and notify them that their check is available. Class Members will have 6 months from the date of final Court approval of the Agreement to pick up their checks or request that the checks be mailed to them. Thereafter, Class Members who have not picked up their checks

or requested their checks be mailed to them will forfeit any right they have to receive their back pay settlement amount.

VIII. RELEASE BY PLAINTIFFS AND CLASS MEMBERS: For and in consideration of this Agreement, Plaintiffs and Class Members, for themselves, their spouses, heirs, successors, and assigns, hereby release and discharge 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 Plaintiffs and Class Members may have whether known or unknown, arising from the beginning of time to the Effective Date of this Agreement that relate in any way to claims in the Complaint ("Claims"). 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 related to pay discrimination based on sex, all alleged Claims for pay discrimination based on sex, disparate benefits or related discrimination related to pay discrimination based on sex, or other alleged unlawful practices based on pay discrimination based on sex arising under any equal pay provision found in federal, state, or local statute, ordinance, or regulation, or common law, including, without limitation: Claims under the Fair Pay for Women Act, 1978 NMSA 28-23-1, *et seq.*; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Employee Retirement Income Security Act; the Equal Pay Act; the Fair Labor Standards Act; the New Mexico wage laws; the New Mexico Human Rights Act, 1978 NMSA 28-1-1 *et seq.*; 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 unequal pay, or any related pay disparity laws, rule or regulations. Claims also include 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; other equitable relief; compensatory damages; liquidated damages; punitive damages; attorneys' fees; costs; interest; or any other claims for damages relating to the Claims in the Complaint.

IX. ACKNOWLEDGMENT OF COURT APPROVAL. The parties acknowledge and agree that this Agreement is subject to court approval, and enforcement of the Agreement by all Parties is contingent upon the court approving the terms of the Agreement.

X. 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 Plaintiffs and Class Members and the City. To the extent permitted by law, Plaintiffs and Class Members agree that if any administrative claim is made related to the Claims, Plaintiffs and Class Members shall not be entitled to recover any individual monetary relief pursuant to such administrative claim.

XI. CONFIDENTIALITY. The Parties agree that this Agreement is subject to the confidentiality and disclosure requirements of the 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 this Agreement and its terms are not confidential.

XII. ADDITIONAL PROVISIONS.

A. Indemnification. If any Plaintiff or Class Member or their heirs or estates, brings any action on any matters, claims, or demands released herein, against any Releasee, that Plaintiff or Class Member shall indemnify said Releasee for any related costs, or fees, including attorney's fees required by Releasee to defend against such actions, claims or demands.

B. 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.

C. 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.

D. Entire Agreement. All the terms of this Agreement are contained in this document. No statements or inducements have been made contrary to or in addition to the statements herein, and 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.

E. 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 its conflicts of laws principles. The Parties agree and consent to the exclusive jurisdiction of the courts of the State of New Mexico. The

Parties further agree that the exclusive 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.

F. 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.

G. 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.

H. 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: (i) shall never be admissible as evidence against the Releasees 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 Releasees as an absolute and final defense and bar to any Claim released herein. This relates solely to enforcing the Agreement and not to any Claim either party might have against the other in the future.

I. Taxation Liability. The City makes no representations, takes no position, and assumes no responsibility with respect to the taxable consequences of the Agreement. Plaintiffs and Class Members shall be responsible for and will pay any tax for which they are liable resulting from any payment made pursuant to this Agreement. Neither the City, its attorneys, nor anyone affiliated with the City has made any representations regarding the tax consequences of the settlement provided for by this Agreement. 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 backpay provided to a Plaintiff or Class Member constitutes income for which any taxes remain due and owing, or that additional deductions required from a Plaintiff or Class Member should have been taken out for the benefit of such Plaintiff or Class Member, that Plaintiff or Class Member shall be responsible for the payment of any portion of such taxes that would be attributable to such Plaintiff or Class Member, or for the payment of any applicable interest or penalties on such taxes including any amounts it is determined should have been withheld or deducted from their payment but were paid directly to the Plaintiff or Class Member as a part of the lump sum settlement; but is not responsible for any portion of such taxes and any applicable interest or penalties on such taxes or any other amounts normally attributable to the City. Any such Plaintiff or Class Member shall indemnify the City for

any taxes attributable to such Plaintiff or Class Member, as well as any interest, costs, expenses, fees, including all reasonable attorneys' fees, penalties, or other payments ("additional costs") which the City may reasonably incur as a result of such Plaintiff's or Class Member's non-payment of such taxes and/or additional costs, but such Plaintiff or Class Member shall not be responsible for any taxes, interest, penalties or additional costs attributable to the City. In the event it is ultimately determined that any monies are due and owing for taxes and additional costs with respect to the distribution of the Settlement Fund, the validity of this Agreement shall not be affected in any way.

J. 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.

K. 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.

L. 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.

XIV. 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.

SIGNATURES BEGIN ON NEXT PAGE
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