

**SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter the "Agreement") is made this 21<sup>st</sup> day of June, 2019, by and among the Plaintiff Michael Williams and the Defendant, the City of East Orange, and all of the City's officers, officials, agents, servants and employees including, but not limited to those named or otherwise named with fictitious designations or those who could have been or should have been named as Defendants in the lawsuit entitled Michael Williams v. City of East Orange; Sheilah Coley; Phyllis Bindi; and, Anthony Cook, Docket No. ESX-L-1947-18 in the Superior Court of New Jersey, Law Division, Essex County, all of which are hereinafter collectively referred to as the "City", a municipal corporation of the State of New Jersey, without any admissions of liability and for the purpose of avoiding further consumption of time and future costs of litigation.

**WITNESSETH:**

WHEREAS, Plaintiff filed a Complaint against the City before the Essex County Superior Court, captioned Michael Williams v. City of East Orange; Sheilah Coley; Phyllis Bindi; and, Anthony Cook and given the Docket Number ESX-L-1947-18; and

WHEREAS, based upon the allegations in his Complaint, Plaintiff sought to recover monetary damages against the City; and

WHEREAS, the City filed an Answer along with Affirmative Defenses to Plaintiff's Complaint wherein the City denied Plaintiff's allegations against the City as well as denied the factual and legal viability of Plaintiff's claims against the City; and

WHEREAS, both Plaintiff and the City have been represented by independent counsel of their choice; and

WHEREAS, both Plaintiff and the City wish to settle this matter instead of proceeding forward with any litigation, including any potential appeals, and any and all other claims, charges, complaints, grievances, disputes or other potential actions of any kind whatsoever between them; and

WHEREAS, the Plaintiff acknowledges and agrees that the payment provided for herein is given as consideration for: (1) his agreement to voluntarily release, dismiss, waive and relinquish all claims, complaints, charges, administrative actions and civil actions of any kind against the City (2) his agreement not to make any further claims against the City, including, but not limited to any claims for attorney's fees and (3) is conditioned upon the acceptance by the Plaintiff of all of the terms and conditions of this Agreement;<sup>1</sup> and

WHEREAS, this Agreement and the settlement herein shall not be construed as an admission of wrongdoing, in any manner, by the City and the City expressly denies each and every allegation made by the Plaintiff; and

WHEREAS, this Agreement is entered into for reasons other than the merits of Plaintiff's claims and solely to avoid the time and expense of litigation, including, but not limited to, any potential appeals; and

WHEREAS, in consideration of the mutual covenants and promises contained herein and

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<sup>1</sup> Nothing in this Agreement shall affect and/or limit any of Plaintiff's rights relating to existing or future workers' compensation claims.

intending to be legally bound, Plaintiff and the City mutually agree as follows:

1. The settlement of this matter is contingent upon foregoing litigation of any and all potential claims of any kind, whether known or unknown, by Plaintiff against the City and by the City against the Plaintiff. However, nothing in this Agreement shall affect and/or limit any of Plaintiff's rights relating to existing or future workers' compensation claims.

2. Release of Plaintiff's Claims Against the City. It is hereby understood and agreed that Plaintiff, for and in consideration of the payment of monies, does hereby knowingly, irrevocably and unconditionally release and forever discharge for himself, his heirs, executors, administrators, representatives and assigns, the City as well as any of its governing bodies, related entities and any of the City's predecessors, successors, present or former assigns, present or former agents, present or former directors, present or former insurance carriers, present or former co-insurers, present or former re-insurers, present or former employees and present or former members, of and from all manner of action(s), cause(s) of action and suit(s), including but not limited to, any claims (including any and all claims filed, or to be filed, by Plaintiff with Public Employment Relations Committee, Equal Employment Opportunity Commission, and/or the Civil Service Commission), future claims, demands, obligations, claims arising under any state or federal statute, counterclaims, defenses, demands, liabilities, damages, costs, expenses, counsel fees, liens debts, sums of money, accounts, reckonings, bonds, bills, claims for attorney's fees, interest, contracts or claims for compensation, in law or in equity, civil or criminal, vested or contingent, which the Plaintiff ever had, now has or presently asserts or which the Plaintiff's

children, spouses, parents, relatives, heirs, executors, representatives, assigns or administrators hereafter can, shall or may assert in the future, it being the intention of the Plaintiff to release the City from any and all claims of any nature, up to the date of this Agreement, unrestricted in any way by the nature of the claim, including, but not limited to all matters which were asserted or could have been asserted in any action or claims identified above or any matter arising out of, in any way related to the incidents, claims, assertions, contentions, facts, or evidence connected to the litigation previously referenced in this Agreement and bearing the docket number of ESX-L-1947-18. Nothing in this Agreement shall affect and/or limit any of Plaintiff's rights relating to existing or future workers' compensation claims.

3. **Release of the City's Claims Against Plaintiff.** It is hereby understood and agreed that the City does hereby knowingly, irrevocably and unconditionally release and forever discharge, for itself (jointly, severally, or individually), their heirs, executors, administrators, representatives, assigns, employees, officers and directors, Plaintiff and any and all of Plaintiff's predecessors, successors, assigns, executors, administrators, attorneys and agents, and all persons acting by, through, under or in concert with Plaintiff, of and from all manner of action(s), cause(s) of action and suit(s), including but not limited to, any claims, debts, sums of money, accounts, reckonings, bonds, bills, claims for attorney's fees, interest, expenses and costs, contracts or claims for compensation, in law or in equity, civil or criminal, vested or contingent, which the City ever had, now has or presently asserts or which the City's heirs, executors, representatives, assigns or administrators hereafter can, shall or may assert in the future, it being the intention of the City to

release Plaintiff from any and all claims of any nature, up to the date of this Agreement, unrestricted in any way by the nature of the claim, including, but not limited to all matters which were asserted or could have been asserted in any action or claims identified above or any matter arising out of, in any way related to the incidents, claims, assertions, contentions, facts, or evidence connected to the matter previously referenced in this Agreement and bearing the docket number of ESX-L-1947-18. Nothing in this Agreement shall affect and/or limit any of Plaintiff's rights relating to existing or future workers' compensation claims.

4. **Settlement Payment.** It is understood and agreed that any payment under this Agreement is made conditional upon receipt, by counsel for the City, of a fully executed original of this Agreement and a Stipulation of Dismissal With Prejudice. It is further agreed that the City, shall pay the sum of THIRTY TWO THOUSAND AND FIVE HUNDRED (\$32,500) DOLLARS (hereinafter referred to as "Settlement Payment"), which shall be paid as follows: .

- i) A check made payable to Michael Williams in the amount of \$21,312.51, which will be reported on an IRS Form W-2;
- ii) A check made payable to McOmber & McOmber, P.C. in the amount of \$11,187.49, which will be reported on an IRS Form 1099; and
- iii) These two (2) checks will be delivered to Plaintiff's attorney, R. Arnen McOmber, Esq. fourteen (14) days after counsel for Defendants receive an executed copy of this Agreement.
- iv) In addition, all disciplinary charges against Plaintiff shall be withdrawn fourteen (14) days after counsel for Defendants receive an executed copy of this Agreement.

It is specifically understood and agreed that the amount paid under this Agreement includes

all attorney's fees to which Plaintiff and/or his attorney may be entitled, including those articulated under the catalyst doctrine. Neither Plaintiff nor anyone acting on his behalf shall make application, in connection with this matter, for any monies other than the Settlement Payment.

5. **Acknowledgment of Parties.** Each of the parties has carefully read and understands the terms and conditions of this Agreement and each party has been advised by counsel as to the meaning and legal implications of this Agreement, and executes this document and all releases and conditions contained within knowingly and voluntarily.

6. **No Claims Permitted/Covenant Not To Sue.** The Plaintiff represents that this matter is concluded in its entirety and he will not file any complaint, charges or grievances against the City, with any local, state or federal agency, court, administrative body, or other entity and that he will not file, at any time hereafter, for any claims, known and unknown, that exist through and up to the date this agreement is executed. Plaintiff agrees not to voluntarily initiate, instigate or participate in the investigation or prosecution of any action by any local, state or federal agency, court or other entity and agrees not to contact any local, state or federal agency, court or other entity regarding the City, unless specifically subpoenaed to appear or otherwise required to act by court order. Plaintiff specifically, knowingly and voluntarily, waives the right to damages or payment of any kind relating to any matter filed by any agency against the City. Nothing in this Agreement shall limit the Plaintiff's rights to enforce the terms and conditions set forth in this Agreement. Nothing in this Agreement shall affect and/or limit any of Plaintiff's rights relating to existing or future workers' compensation claims.

7. Attorney's Fees And Expenses: It is specifically understood and agreed that the amount paid under this Agreement includes all attorneys' fees and costs to which Plaintiffs may have been entitled in connection with this matter, and the Settlement Payment is specifically intended to be inclusive of all attorneys' fees and costs in this matter.

8. Tax Consequences. The City makes no representation regarding the Federal and State tax consequences of the Settlement Payment and shall not be responsible for any tax liability, interest or penalty, liens or claims incurred by Plaintiff, which in any way arise out of or is related to said Settlement Payment. Plaintiff shall be responsible for the payment of any Federal or State taxes, or claims or liens there under required by law to be paid with respect to this Settlement Payment.

9. Medicare and Medicaid. Plaintiff represents and warrants that neither Medicare nor Medicaid has made any payment for medical services relating to the claimed injuries and damages that are the subject of the lawsuit entitled, Michael Williams v. City of East Orange, Sheilah Coley; Phyllis Bindi; and, Anthony Cook under docket number ESX-L-1947-18. Plaintiff further acknowledges and agrees that the City has no obligation or responsibility to pay any past or future injury-related medical expenses that have arisen or may hereafter arise out of or relate in any way to the claims asserted in the lawsuit entitled Michael Williams v. City of East Orange, Sheilah Coley; Phyllis Bindi; and, Anthony Cook under docket number ESX-L-1947-18, and that the City has no obligation or responsibility to reimburse Medicare, Medicaid, the Centers for Medicare and Medicaid Services, or any other entity or person for any such past or future medical

expenses. Nothing in this Agreement shall affect and/or limit any of Plaintiff's rights relating to existing or future workers' compensation claims. Plaintiff acknowledges and agrees that it is his responsibility alone to reimburse such entities for any payments made on his behalf for such past or future medical expenses. Plaintiff further agrees to indemnify and hold the City harmless from any and all claims, demands, liens, subrogated interests and/or causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or Medicaid and/or persons acting on behalf of Medicare or Medicaid concerning medical, hospital or other expenses arising out of claims asserted in the lawsuit entitled, Michael Williams v. City of East Orange, Sheilah Coley; Phyllis Bindi; and, Anthony Cook under docket number ESX-L-1947-18, or concerning any claim based on inaccurate or inadequate information provided by Plaintiff concerning his status as a Medicare or Medicaid beneficiary. Plaintiff acknowledges and agrees that the City is relying upon Plaintiff's representations regarding my Medicare and Medicaid status, and the City is also relying upon Plaintiff's representations herein concerning Plaintiff's obligation to satisfy any past or future claims or liens asserted by Medicare, Medicaid, or any other person or entity. Plaintiff acknowledges and agrees that any misrepresentations by me or on my behalf concerning such matters are and shall be deemed a material breach of this Agreement.

10. Counterparts/Facsimile Signature. This Agreement may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument, and such execution may be evidenced by signatures delivered by facsimile transmission. Delivery of an executed copy of this Agreement by facsimile

shall be equally as effective as delivery of a manually-executed copy of this Agreement.

11. **Terms Deemed Invalid and Severability.** In the event that any provision of this Agreement shall be determined to be invalid, unlawful or ineffective, the remaining provisions of this Agreement shall not be affected thereby.

12. **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to choice of law rules.

13. **Authority To Bind.** The City and Plaintiff each represent that he or it is duly authorized to execute this Agreement, and to enter into the settlement described herein, and that the person signing this Agreement has the authority to bind the party for whom he or she is signing this Agreement. No undertaking or obligation contained herein conflicts with any contracts or obligations to which any party to this Agreement is a party. The parties further represent that he or it is the current and exclusive owner of all claims which he or it releases or agrees to dismiss pursuant to this Agreement; that he or it has not assigned to any person or entity any of the claims or rights which he or it releases or agrees to dismiss pursuant to this Agreement, and that no other person may assert any claim or right released or dismissed pursuant to this Agreement or any claim based on or derived from any claim or right released or dismissed under this Agreement.

14. **Binding Agreement.** This Agreement shall be binding upon, enforceable against, and inure to the benefit of the City and the Plaintiff, and all of their respective predecessors, successors, assigns, employees, partners, affiliates, associates, agents, representatives, directors, officers, members, subsidiaries, related corporations, parent companies, shareholders, principals,

and underwriters.

15. **No Publicity, Disparagement or Disclosure of Confidential Information.** To the extent permitted by law, Plaintiff and the City agree that they shall not issue any public communication, written, verbal or otherwise, that disparages, criticizes or otherwise reflects adversely upon either the Plaintiff or the City or which encourages any adverse action against either the Plaintiff or the City, provided that each is permitted to testify truthfully under oath pursuant to subpoena. Additionally, the Plaintiff and the City agree not to disparage or make or solicit any comments, statements, or the like to the media, future/prospective employers or to other third parties, that may reasonably be expected to lead to unwanted or unfavorable publicity or may reasonably be considered to be derogatory or detrimental to the good name or business reputation of each other or to each other's heirs, assigns, predecessors, successors, agents, officers, employees, directors, former employees, principals, subsidiaries, insurers, co-insurers, re-insurers and representatives.

Plaintiff and his counsel agree that they will not disclose the terms of this Agreement, or the amount to be paid hereunder, to any individuals or entities, including but not limited to, members of the press and media, present and former officers, employees and agents and other members of the public, except to the extent required by law. This prohibition does not include disclosure to Plaintiff's attorneys, accountants, financial advisors, spouses, insurers or governmental taxing authority, as to whom Plaintiff agrees to relay and/or read the confidentiality requirements of this Agreement and be legally responsible for any disclosures resulting in a breach

of the conditions set forth herein.

All parties to this Agreement agree and acknowledge that this section is a material term of this Agreement, the absence of which would have resulted in the City's refusal to enter into this Agreement.

Any breach, by Plaintiff, of the requirements of any aspects of the non-disparagement, no publicity or non-disclosure of confidential information clauses featured in this section shall subject Plaintiff to damages as set forth in the "Breach of Agreement" section of this Agreement.

Plaintiff understands that although he has agreed to keep the terms of this Agreement and the amount to be paid hereunder confidential, such a provision relating to the underlying facts of Plaintiff's claims is unenforceable against Plaintiff pursuant to New Jersey law.

16. **Breach of Agreement.** In the event of a breach of any of the terms contained in this Agreement, the breaching party shall be liable for whatever damages should result.

17. **Waiver of Breach.** The waiver by any party of a breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach, nor shall any waiver of any provision of this Agreement in any instance be deemed to be a waiver of any other provision in any other instance.

18. **No Admission of Liability.** This Agreement is a settlement by the parties of the litigation herein described and does not constitute an admission of liability by any of the parties, but is made solely as a compromise to the disputed claims between the parties, and shall not be admissible by anyone in any proceeding other than an action to enforce any of its terms and

provisions. Neither the Plaintiff nor the City will ever claim to be the prevailing party in this matter, in any subsequent litigation or in any threatened litigation.

19. **Entire Agreement and Amendments.** This Agreement constitutes the entire understanding between the parties hereto, represents the final written expression of the parties with respect to the subject matter hereof, and may not be amended, altered or modified except by a writing signed by both the City and Plaintiff.

Plaintiff acknowledges that, in executing this document, he has not relied upon any statement, promise or representation, oral or written, not set forth herein.

20. **Further Assurances.** The City and Plaintiff each agree to take all reasonable steps necessary to effectuate the terms of this Agreement.

21. **Inadmissible as Evidence.** This Agreement and the contents hereof shall not be admissible as evidence in any civil litigation except to enforce the terms expressed herein and shall not be deemed to be an admission of liability by any party to this Agreement.

Executed this 21 day of June 2019

By: Michael Williams

STATE OF New Jersey :  
 :SS  
COUNTY OF monmouth :

Sworn to and subscribed  
before me this 21 day of June, 2019

*Samantha R. Pulasie*  
 SAMANTHA R. PULASKI (Notary Public)  
 A NOTARY PUBLIC OF NEW JERSEY  
 MY COMMISSION EXPIRES MAY 6, 2021

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019

**VICTOR A. AFANADOR, ESQ.**  
Counsel for the Defendant,  
City of East Orange

Executed this 18 day of July, 2019

Executed this 21 day of June 2019

DATED: JULY 22, 2019