

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into between the City of Riverside ("City"), its past or present officers, directors, governing body, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and all persons acting by, through, under or in concert with any of them, Russ Leach ("Leach"), John De La Rosa ("De La Rosa"), Michael Blakely ("Blakely"), and Ed Blevins ("Blevins") on the one hand (the City, Leach, De La Rosa, Blakely, and Blevins may be collectively referred to as "Defendants"), and Chris Lanzillo ("Lanzillo" or "Plaintiff"), on the other, with respect to the following facts. (The City, Leach, De La Rosa, Blakely, Blevins and Lanzillo may be referred to individually as a "Party" or collectively as the "Parties") in light of the following:

RECITALS

A. On March 4, 2010, Lanzillo filed a government claim for damages pursuant to Cal. Gov't Code Sections 910, et seq., alleging that Defendants violated Lanzillo's civil rights by taking certain adverse actions against him in retaliation for certain protected activities.

B. On May 6, 2010, Lanzillo filed a lawsuit against Defendants in the United States District Court, Central District of California, Case No. CV-10-03409 CAS (DTBx) alleging claims for relief for: (1) violations of Plaintiff's First and Fourteenth. Amendment rights pursuant to 42 U.S.C. section 1983; (2) violations of *Government Code* sections 3502. 3506; (3) violation of *Labor Code* section 1102:5; and (4) violation of Public Safety Officers Procedural Bill of Rights Act, *Government Code* section 3304 ("the Federal Court Action");

C. In June, 2010, Lanzillo was notified of the intent to terminate his employment as a Police Detective with the City's Police Department.

D. On June 15, 2010, Lanzillo thereafter filed a supplemental government claim alleging that the Defendants' intent to terminate Lanzillo was further retaliation for filing the prior government claim, as well as various other alleged protected activities. Lanzillo also disputed the basis for the notice of intent to terminate and has appealed his termination and the matter is to be set for an administrative hearing to determine the validity of the termination ("the Administrative Action"). Collectively, the March 4, 2010 and June 15, 2010 Claims for Damages will be referred to herein as "the Government Claims."

E. Lanzillo currently has eight (8) workers' compensation claim pending with the California Workers' Compensation Appeals Board ("WCAB") related to his employment with the City. The claims are designated as WCAB Case Nos. ADJ738590 (date of injury – 3/30/94); ADJ7383587 (date of injury – 3/2/10); ADJ7383576 (date of injury – 2/19/10); ADJ1394431 (date of injury – 8/4/06); ADJ4333304 (date of injury – 7/17/02), ADJ1552279 (date of injury – 8/11/00); ADJ1133108 (date of injury – 3/23/97) and ADJ7383576 (date of injury – 5/17/10) (collectively the Workers' Compensation Actions").

F. This Agreement and Release shall apply to all grievances, disputes, controversies, claims and actions between Defendants and Lanzillo with the exception of (1) Workers' Compensation Claim #ADJ7383576 for injuries alleged to neck, bilateral upper extremities, bilateral shoulders as a secondary consequence, and (2) any and all future medical treatment including reimbursement for medical mileage and self-procured expenses to which Lanzillo is

entitled related to his back and/or neck injuries and for which he has previously received lifetime medical benefits ("the Unreleased Claims"). With the singular exception of the Unreleased Claims, this Agreement and Release shall apply to all remaining grievances, disputes, controversies, claims and actions between Defendants and Lanzillo in connection with Lanzillo's employment with the City, including, but not limited to the Administrative Action, the Government Claims, the Workers' Compensation Actions (except for the Unreleased Claims) and the Federal Court Action, in order to make their peace and avoid the uncertainties of litigation, investigation or review, and the expenses and costs incident thereto.

NOW, THEREFORE, the Parties covenant and agree as follows:

1. Lanzillo does hereby and forever release and discharge the City and any past and/or present parent, subsidiary and/or affiliated entities, as well as all direct or indirect successors, officers, officials, directors, heirs, predecessors, assigns, agents, insurers, employees, attorneys and representatives of the City, and each of them, past and present, including, but not limited to, Leach, De La Rosa, Blakely, and Blevins, (collectively "City Released Parties") from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, and demands of whatsoever kind or character (except for the Unreleased Claims), known or unknown, suspected to exist or not suspected to exist, anticipated or not anticipated, whether or not heretofore brought before any state or federal court or before any state or federal agency or other governmental entity (including, but not limited to, the Administrative Action, the Government Claims, the Workers' Compensation Actions [except for the Unreleased Claims] and the Federal Court Action) and from all claims arising from or related or attributable in whole

or in part, to Lanzillo's employment relationship with the City as well as any other relationship with Defendants and from any grievance or other dispute actual or potential, between the Parties, whenever such claims may have occurred including but not limited to, any and all claims for discrimination, harassment, defamation, violation of any statutory or constitutional rights, violation of any employer policies or procedures and all claims for attorneys' fees and costs relating thereto and all claims which Lanzillo has brought or could bring under any statute or legal theory, including the California Civil Code, the California Fair Employment and Housing Act, Title VII of the U.S. Civil Rights Act, the Age Discrimination in Employment act and any other state, federal or constitutional statute or provision prohibiting harassment, discrimination and/or retaliation in employment.

2. Lanzillo understands that this Agreement extends to all grievances, disputes or claims of every nature and kind (except for the Unreleased Claims), known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to the above-referred matters and disputes. Lanzillo understands and expressly agrees that this Agreement also extends to any other matter, event or claim occurring prior to the date of execution of this Agreement (except for the Unreleased Claims). Lanzillo further acknowledges that any and all rights granted to him under Section 1542 of the California Civil Code, or any other analogous federal or state law or regulation, are hereby expressly waived (except for the Unreleased Claims). Said Section 1542 of the California Civil Code reads as follows:

SECTION 1542. CERTAIN CLAIMS AFFECTED BY GENERAL RELEASE.
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3. Lanzillo understands and expressly agrees that this Agreement shall bind and benefit his spouse, children, heirs, agents, attorneys, representatives and assigns.

4. Lanzillo acknowledges that he has carefully read this Agreement and has been advised fully by legal counsel or other legally authorized representative of the legal and binding effect of its terms. Lanzillo acknowledges that the only promises made to induce him to sign this Agreement are those stated herein. Having been fully advised and informed, Lanzillo voluntarily enters into this Agreement, including the waiver of rights covered by this Agreement.

5. Lanzillo hereby covenants not to sue or initiate against any City Released Parties, any action or proceeding or to participate in same, individually, or as a member of a class, under any policy, contract, law or regulation, federal, state or local, pertaining in any manner whatsoever to Lanzillo's employment with the City, pursuant to any rights Lanzillo may have under any policy, or local, state or federal statute, law, or regulation (with the exception of the Unreleased Claims).

6. The Parties hereto agree that this Agreement, including the covenant not to sue contained herein, does not extend to acts, events or conditions which may initially arise in the future, i.e., subsequent to the last date this Agreement is executed.

7. In consideration for the releases contained herein, Lanzillo and the Defendants agree to the following:

a) Within 15 days after Plaintiff's counsel sends a fully executed copy of this Agreement to Defendants' counsel, Defendants will within 15 days after receipt of the fully executed Agreement return to Plaintiff's counsel a copy of the Agreement fully executed by all Defendants.

b) Concurrent with the signing of this Agreement by all parties, Lanzillo will provide the City with a signed copy of a Compromise and Release ("C&R") to be submitted to the Workers' Compensation Appeals Board ("WCAB") for its approval to resolve any and all of the Workers' Compensation Actions (with the exception of the Unreleased Claims) for a total payment to Lanzillo of twenty-five thousand dollars (\$25,000). The City will submit this C&R to the WCAB within 5 calendar days of full execution of this Agreement. Contingent upon approval of the C&R by the WCAB, payment in the amount of \$25,000 shall be made to Lanzillo. A copy of the C&R to be submitted to the WCAB is attached hereto as Exhibit A. The parties agree that the WCAB's approval of the C&R is an essential and material component of this Agreement. In the event the C&R is not approved, this entire Agreement shall be null and void.

c) The Parties agree that within 15 days after Plaintiff's counsel sends to Defendants' counsel a copy of this Agreement executed by Plaintiff, Defendants will reinstate Lanzillo to the position of Police Detective, with the same benefits and at the same regular rate of pay, compensation and terms and conditions of employment as were in effect on the date of Lanzillo's termination. Lanzillo shall receive back pay from the date of his termination from

employment with the City to the date he executes this Agreement. Lanzillo shall receive his regular rate of pay and benefits, as described herein, from the date of his reinstatement through December 23, 2010. Nothing herein shall make Lanzillo eligible to receive any claimed overtime pay, specialty pay, bonus pay, or any compensation in excess of Lanzillo's regular rate of pay. Payment of all wages shall be made to "Chris Lanzillo" and all applicable payroll withholdings shall be made. Payment shall be made on January 1, 2011. Lanzillo agrees that while he is on paid or unpaid administrative leave from the City, he shall not perform any duties and/or exercise any police powers on behalf of the City unless express authorized by the Chief of Police, in writing. During the time period he is on paid or unpaid leave, Lanzillo is also restricted from access to any City facility, except for those facilities open to the public, unless expressly authorized by the Chief of Police in writing.

d) Following Lanzillo's reinstatement, the City will impose, and Lanzillo agrees to serve, an 80 hour suspension without pay with respect to Lanzillo's comments which were the subject of IA No. PA1002011 which, in part, led to Lanzillo's termination. Lanzillo will receive benefits and will continue to accrue vacation and sick leave during this unpaid suspension. The City will not discipline Lanzillo for any alleged untruthfulness relating to IA No. PA1002011. Lanzillo will not appeal or challenge in any administrative or legal proceeding, the imposition of this suspension and expressly waives any right he may have to appeal or challenge this suspension in any judicial or administrative proceeding.

e) The Parties agree that on December 31, 2010, the City of Riverside shall submit to CalPERS, on Plaintiff's behalf, an "employer initiated" Industrial Disability Retirement

Application for Plaintiff. Plaintiff will cooperate with CalPERS and the City to provide any necessary information in connection with the Application. If Lanzillo's Application is not approved for any reason, this entire Agreement is null and void and the parties shall return to the same position and with the same rights as they had prior to the Agreement being executed. In the event this Agreement is deemed null and void the parties agree that neither will attempt to use the time spent reaching or effecting this Agreement in order to prejudice the other party.

f) Effective January 1, 2011, the City will begin paying Lanzillo advanced disability payments pursuant to California Labor Code sections 4850.3 and 4850.4. The City will make these payments until Lanzillo (1) begins receiving his retirement benefits directly from CalPERS, or (2) Lanzillo's application for disability retirement is denied. These advanced disability payments shall be paid directly to Lanzillo. The parties agree that if CalPERS for any reason determines that Lanzillo is not disabled, or if it is otherwise challenged and set aside, Lanzillo agrees to repay the City any and all advanced disability payments he received by making payments to the City in the amount of \$250.00 every month, due on the first of each month, until the balance of the advanced disability payments is paid in full.

g) The City will pay to Lanzillo \$25,000.00 ("Settlement Amount") in consideration for his release and dismissal of any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, and demands of whatsoever kind or character (except for the Unreleased Claims), known or unknown, suspected to exist or not suspected to exist, anticipated or not anticipated, whether or not heretofore brought before any state or federal court or before any state or federal agency or other governmental entity (including, but not limited to, the

Administrative Action, the Government Claims, the Workers' Compensation Actions [with the exception of the Unreleased Claims] and the Federal Court Action). Such payment will occur after December 31, 2010, but before January 15, 2011. Payments shall be made in two checks made payable as follows: One check to "Lackie, Dammeier & McGill" in the amount of \$20,000.00 and One check to "Chris Lanzillo" in the amount of \$5,000.00. The parties agree that the sum of money to Lanzillo is payment on account of Plaintiff's claims for personal injuries and/or emotional distress. The parties' acknowledge that the Settlement Payment is not made on account of any claims for lost wages, benefits or punitive or exemplary damages. Lanzillo agrees to assume full responsibility, if any, for payment of taxes on any and all of the Settlement Payments identified in this Agreement. Lanzillo agrees to indemnify and hold the City harmless from tax liability, if any, which may become due as a result of the payment of any and all of the Settlement Payments identified in this Agreement.

h) Within 15 days after the City submits an Industrial Disability Retirement Application on Plaintiff's behalf, Plaintiff will execute and provide to Defendants a Stipulation for Dismissal with prejudice of the Federal Court Action pursuant to Federal Rule of Civil Procedure 41, and a Notice of Withdrawal of his Administrative Appeal. The Parties and their counsel shall cooperate and prepare documentation as may be required by the Court to effectuate the dismissal with prejudice. This Agreement is contingent upon the Parties entering into a stipulation for dismissal of the Federal Court Action with prejudice and the Court dismissing the Federal Court Action with prejudice in its entirety. If the Parties fail to enter into the stipulation, or the Court fails to dismiss the action with prejudice in its entirety, this Agreement shall be null and void. Defendants

shall hold the documents identified within this paragraph in trust until Plaintiff's Industrial Disability Retirement Application is approved by CalPERS.

8. In addition to the Federal Court Action, the Government Claims, the Administrative Actions and the Workers' Compensation Actions [with the exception of the Unreleased Claims], Lanzillo also agrees to dismiss with prejudice and withdraw from consideration by any state, local or federal agency, court, arbitrator or other body, any grievance, claim, charge, complaint, action, appeal, or notice which he may have filed or could file complaining of or pertaining to any actions relating to his employment with the City.

9. Effective upon the signing of this Agreement by all parties and contingent upon Lanzillo receiving an industrial disability retirement, Defendants shall take all steps to remove from Plaintiff's personnel file, or any other file used for personnel purposes, any references to his termination, including the underlying internal affairs investigation. Any documents referencing Plaintiff's termination shall be placed in a sealed file marked as "confidential" and kept at the law offices of Liebert Cassidy Whitmore. At two years from the creation of those documents, they shall be destroyed. Plaintiff's personnel file shall reflect that he medically retired in good standing as a detective with the Riverside Police Department. Upon his retirement, Plaintiff will be entitled to all benefits ordinarily afforded retiring employees, including cashing out of all of Plaintiff's leave banks in accordance with the applicable memorandum of understanding and/or applicable state law. Upon retirement, the City will provide Plaintiff with a retired law enforcement officer's identification card, with CCW endorsement, and an appropriately adorned

Lucite encased badge/plaque indicating his name, rank, Riverside Police Department, and dates of service.

10. Any and all request for information regarding Plaintiff by outside agencies or prospective employers will be forwarded to the Human Resources Director who will provide only Plaintiff's dates of service to the City and if appropriate, the fact that he medically retired in good standing, except upon receipt of a notarized release signed by Lanzillo which specifically directs or authorizes the City to provide employment information in compliance with Government Code § 1031.1.

11. **Specific Acknowledgment of Waiver of Claims under ADEA and OWBPA**

The Age Discrimination in Employment Act of 1967 ("ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty or older. The Older Workers Benefit Protection Act ("OWBPA"), 29 U.S.C. sections 626, *et seq.*, further augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this Agreement, Lanzillo acknowledges that he is knowingly and voluntarily, for just compensation in addition to anything of value of which Lanzillo was already entitled, waiving and releasing any rights he may have under the ADEA and/or OWBPA. Lanzillo further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- a. This waiver/release is written in a manner understood by Lanzillo.

b. Lanzillo is aware of and has been advised by legal counsel of his own choosing of his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws.

c. Lanzillo is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement, and the waiver and release of any rights he may have under the ADEA, the OWBPA, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) day period.

d. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the effective date of this Agreement.

e. Lanzillo is hereby advised that he should consult with an attorney prior to executing this Agreement.

f. Lanzillo has had an opportunity to discuss this waiver and release with, and to be advised with respect thereto, by an attorney of his choice, and that he does not need any additional time within which to review and consider this Agreement.

g. Lanzillo has seven (7) days following his execution of this Agreement to revoke this Agreement.

h. This Agreement shall not be effective nor enforceable until after it is executed by all the Parties and after the expiration of the seven (7) day revocation period set forth in the preceding subparagraph.

LANZILLO ACKNOWLEDGES BY HIS SIGNATURE THAT HE FULLY UNDERSTANDS HIS RIGHT TO DISCUSS THIS WAIVER WITH LEGAL COUNSEL, THAT HE HAS CAREFULLY READ AND FULLY UNDERSTANDS THE WAIVER, AND THAT HE IS VOLUNTARILY AGREEING TO WAIVE ANY CLAIMS THAT HE HAS OR MAY HAVE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE OLDER WORKERS BENEFIT PROTECTION ACT, AND ANY OTHER LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT ARISING FROM OR RELATED OR ATTRIBUTABLE TO THE LANZILLO'S ALLEGATIONS OR CLAIMS.

12. Each Party understands, acknowledges and agrees that this Agreement is made as a compromise settlement to resolve actual and/or disputed claims and neither its execution nor the furnishing of consideration in compliance with this Agreement shall constitute or be construed for any purposes as an admission by any Party of liability, the merits of any claim or defense, or any violation of any federal or state law, statute, rule, regulation or principle of common law. Any such liability, admission or violation is expressly denied by each of the Parties.

13. Lanzillo represents that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the City Released Parties.

14. The Parties agree to bear their own costs and attorneys' fees incurred in connection with all matters resolved by this Agreement, whether or not incurred as of the date of this Agreement.

15. This Agreement constitutes a single, integrated contract expressing the entire agreement of the Parties hereto. There are no other agreements, written or oral, express or implied, between the Parties hereto, concerning the subject matter hereof, except the agreements set forth herein. The recitals, which the Parties agree are true and correct, shall be deemed an integral part of this Agreement.

16. Each Party and representative for each Party to this Agreement has reviewed this Agreement, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting parties will not be employed in any interpretation of this Agreement.

17. This Agreement may be executed as one or more counterparts, and each such counterpart shall be deemed an original as to the Party to be charged.

18. Lanzillo hereby authorizes, instructs, and directs his attorneys of record to execute all documents necessary and to take all actions required by this Agreement to accomplish and carry out its terms in a timely fashion.

19. No waiver of any Party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of the same, or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the Party to be charged or held bound.

20. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provisions shall be deemed not to be a part of this Agreement.

[SETTLEMENT AGREEMENT CONTINUES ON NEXT PAGE]

21. All Parties acknowledge that they are competent to sign this Agreement, and they do so voluntarily. All Parties to this Agreement further acknowledge that they have had an opportunity to review this Agreement prior to executing it and have had an opportunity to, and did, consult legal counsel of their own choosing prior to executing this Agreement regarding the terms of this Agreement and whether or not to execute this Agreement.

DATED: _____

CHRIS LANZILLO
CITY OF RIVERSIDE

DATED: _____

By _____
Bradley J. Hudson
City Manager

APPROVED AS TO FORM:

LACKIE, DAMMEIER & MCGILL

DATED : 10/13/10

By _____
~~MICHAEL MCGILL~~
Attorneys for Chris Lanzillo

LIEBERT CASSIDY WHITMORE

DATED : _____

By _____
MARK MEYERHOFF
Attorneys for City of Riverside, Russ Leach,
John De La Rosa, Michael Blakely and Ed
Blevins

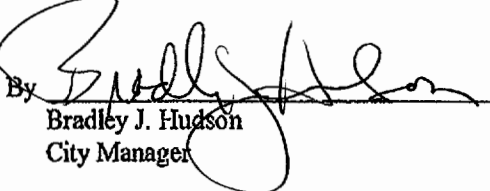
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DATED: 10-14-10


CHRIS LANZILLO

CITY OF RIVERSIDE

DATED: _____

By 
Bradley J. Hudson
City Manager

APPROVED AS TO FORM:

LACKIE, DAMMEIER & MCGILL

DATED : _____

By _____
MICHAEL MCGILL
Attorneys for Chris Lanzillo

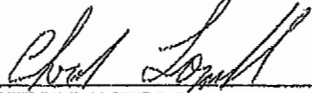
LIEBERT CASSIDY WHITMORE

DATED : _____

By _____
MARK MEYERHOFF
Attorneys for City of Riverside, Russ Leach,
John De La Rosa, Michael Blakely and Ed
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DATED: 10-14-10


CHRIS LANZILLO

CITY OF RIVERSIDE

DATED: _____

By _____
Bradley J. Hudson
City Manager

APPROVED AS TO FORM:


LACKIE, DAMMEIER & MCGILL

DATED: _____

By _____
MICHAEL MCGILL
Attorneys for Chris Lanzillo

LIEBERT CASSIDY WHITMORE

DATED: 10-18-10

By 
MARK MEYERHOFF
Attorneys for City of Riverside, Russ Leach,
John De La Rosa, Michael Blakely and Ed
Blevins