

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is entered into between the City of Banning, a municipal corporation (hereinafter the "City"), and Leonard T. Purvis (hereinafter "Purvis") (hereinafter the City and Purvis are also collectively referred to as the "Parties" or "Party") for the following purposes and with reference to the following facts.

I. RECITALS

A. WHEREAS, Purvis was employed by the City of Banning on or about March 17, 2005 as Deputy Police Chief;

B. WHEREAS, Purvis was subsequently promoted and employed as Police Chief pursuant to that certain City of Banning Employment Agreement With Police Chief effective September 2, 2007 through June 30, 2012 (hereinafter the "Original Contract," which term was automatically renewed by its own terms for an additional twelve (12) months to June 30, 2013;

C. WHEREAS, the City and Purvis mutually entered into a successor City of Banning Employment Agreement For The Position Of Police Chief made effective April 23, 2013 and entered into for an indefinite period (hereinafter the "Successor Contract"), which expressly superseded the Original Contract;

D. WHEREAS, on or about July 1, 2013, Purvis filed a government claims act Claim for Money or Damages against the City (hereinafter "Gov't Claim") and the City having rejected same by operation of law;

E. WHEREAS, on or about August 29, 2013, Purvis filed a complaint with the Department of Fair Employment and Housing ("DFEH") against the City, alleging that he was harassed, discriminated and retaliated against (hereinafter the "DFEH Complaint") and, on or about August 29, 2013, the DFEH issued Purvis a right-to-sue notice;

F. WHEREAS, on October 4, 2013, the Parties engaged in a mediation regarding Purvis's claims and the Parties entered into and agreed to a Stipulation for Settlement dated October 4, 2013;

F. WHEREAS, the City continues to deny or denies any and all of the claims and allegations asserted by Purvis against it; and

G. WHEREAS, the purpose of this Agreement is to settle and compromise all disputes and controversies existing between the City on the one hand, and Purvis on the other, including, but not limited to, the Original Contract, the Successor Contract, the Gov't Claim, the DFEH Complaint, and any other "claims" by Purvis, including but not limited to all claims arising out of, or in any way related to Purvis's employment with the City, and/or all claims arising from any other facts or causes existing prior to the execution date of this Agreement, whether known or unknown, without limitation, and, those described in more detail hereafter.

NOW THEREFORE, and in consideration for the promises contained herein, the Parties agree as follows:

II. DISPOSITION OF CLAIMS

A. This Agreement shall not in any way be construed as an admission by the City or Purvis of any unlawful or wrongful acts or other liability whatsoever against each other or against any other person or entity. The City and Purvis specifically disclaim any liability to, or wrongful acts against each other, or against any other person or entity, on the part of themselves, any related person or any related predecessor corporation or its or their agents, representatives or successors in interest and assigns.

B. Purvis hereby releases on behalf of himself and his heirs, representatives, successors, and assigns, and hereby irrevocably and unconditionally releases and discharges the City and any of its related persons, corporations, past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of the City, and all other persons or entities that could have been named as defendants in the claims (hereinafter "City Releasees"), absolutely and forever from any and all claims, charges, complaints, lawsuits, liabilities, claims for relief, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of actions, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorneys' fees and costs actually incurred), and all other claims and rights of action of all kinds and descriptions, whether KNOWN OR UNKNOWN, suspected or unsuspected, actual or potential, which Purvis now has, owns or holds, or claims to have, own or hold against the City or City Releasees, at common law or under any statute, rule, regulations, order or law, whether federal, state, or local, or on any grounds whatsoever, with respect to any act, omission, event, matter, claim, damage, loss, or injury arising out of the employment of and/or the termination of such employment between Purvis and the City, and/or with respect to any other claims, matters, or events arising prior to the execution of this Agreement by the Parties.

C. Purvis understands and agrees that he is waiving any rights he has, may have had, or may have, to pursue any and all remedies available to him under any employment-related cause of action against the City and City Releasees, including, without limitation, any claims for discrimination, harassment and/or retaliation, claims under the California Fair Employment and Housing Act (California Government Code section 12900, et seq.), the California Family Rights Act (California Government Code section 12945.2), the Unruh and George Civil Rights Acts (California Civil Code section 51, et seq.), all provisions of the California Labor Code and any wage orders or similar directives or authorities issued by any federal or state authority having enforcement powers, the Constitution of the United States, the Constitution of the State of California, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.), the Age Discrimination in Employment Act (29 U.S.C. § 621, et seq.), the Equal Pay Act (29 U.S.C. § 206(d)), the Fair Labor Standards Act (29 U.S.C. § 201, et seq.), the Family and Medical Leave Act (29 U.S.C. § 2601, et seq.), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.), Sections 1981-88 of Title 42 of the United States Code (42 U.S.C. § 1981, et seq.), the American with Disabilities Act (42 U.S.C. § 12101, et seq.), claims of retaliation or whistle-blowing (including but not limited to California Labor Code section

1102.5, et seq. and Government Code section 12653), claims for breach of any type of contract, including written, oral or implied and, including, but not limited to the Original Contract or the Successor Contract, breach of any covenant, promise or representation pertaining to Purvis's employment, whether expressed or implied, and all other claims arising in contract, tort or equity or under any other statute, federal, state or local up to the date of execution of this Agreement. This release and agreement does not include any workers' compensation or industrial injury claims and specifically excludes any future potential injury claims under Labor Code Sections 3212, et seq.

D. **CIVIL CODE SECTION 1542 WAIVER.** Purvis, on behalf of himself and his heirs, agents, representatives, successors, and assigns, hereby waives any and all rights that he may have pursuant to California Civil Code section 1542, which reads as follows:

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.

1. Purvis hereby expressly waives the provisions of California Civil Code section 1542 and further expressly waives any right to invoke said provisions now or at any time in the future.
2. Purvis recognizes and acknowledges that factors which have induced him to enter into this Agreement may turn out to be incorrect or to be different from what he had previously anticipated, and he hereby expressly assumes any and all of the risks thereof and further expressly assumes the risks of waiving the rights provided by California Civil Code section 1542.

E. Purvis represents that, other than the claims described herein, he has not filed any lawsuits, complaints, claims, applications or charges against City or any related persons or corporations or against any of its or their past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring on or prior to the date of execution of this Agreement.

F. Purvis specifically agrees that he shall not in the future file, participate in, instigate or encourage the filing of any lawsuits, complaints, charges or any other proceedings in any state or federal court or before any local, state or federal agency, administrative tribunal, quasi-administrative tribunal or person, claiming that City has violated any local, state or federal laws, statutes, ordinances or regulations or claiming that City has engaged in any tortious, other state, or other federal based misconduct of any kind, based upon any events occurring on or prior to the date of execution of this Agreement unless required by subpoena or court order. Further, Purvis agrees that immediately upon executing this Agreement, he will withdraw in writing and

cause to be dismissed with prejudice in its entirety any and all complaints, charges or claims against City regardless of whether they are specifically referred to herein.

G. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA. The Age Discrimination in Employment Act of 1967 ("ADEA"; 29 U.S.C. §§ 621-634) 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 (40) or older. The Older Workers Benefit Protection Act ("OWBPA"; 29 U.S.C. §§ 626, et seq.) 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, Purvis acknowledges that, in exchange for consideration stated herein, he knowingly and voluntarily waives and releases any rights that he may have under the ADEA and/or OWBPA. Purvis further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA that:

1. This waiver/release is written in a manner understood by Purvis.
2. Purvis is aware of, and has been advised by a representative or legal counsel of his own choosing, of his rights under the ADEA and OWBPA and the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws.
3. Purvis 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, in which case Purvis expressly waives this twenty-one (21) day review period.
4. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise after the effective date of this Agreement. The effective date of this Agreement is seven (7) calendar days after Purvis signs this Agreement. Purvis must sign this Agreement no later than October 29, 2013, making the effective date of this Agreement seven (7) calendar days after he signs it and no later than November 6, 2013.
5. Purvis 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.
6. Purvis has seven (7) calendar days following his execution of this Agreement to revoke it. If Purvis desires to revoke the Agreement, he must give express and actual written notice of revocation to the City within seven (7) calendar days after he executes this Agreement. Such notice of revocation shall be effective only if and when received in writing

by the City Manager's Office before the close of business on the seventh (7th) calendar day after Purvis signs this Agreement.

PURVIS 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 PARTIES' ALLEGATIONS OR CLAIMS.

H. The parties agree that upon execution of this Agreement and following the seven (7) calendar day revocation period, the City and Purvis shall perform the following acts:

1. Purvis shall be entitled to the sum of three-hundred thousand dollars and no cents (\$300,000.00) (the "Settlement Proceeds") to be paid as directed below:
 - a. The Settlement Proceeds shall be issued in two separate checks as follows:
 - i. One-hundred sixty-six thousand dollars and no cents (\$166,000.00) from the City made payable to Purvis as severance, representing the amount equal to Purvis' monthly salary multiplied by twelve (12), excluding deferred compensation or the value of any other benefits, to be reported on a Form W-2 and subject to normal and appropriate federal and state withholding taxes pursuant to law; and
 - ii. One-hundred thirty-four thousand dollars and no cents (\$134,000.00) from the Employment Risk Management Authority (hereinafter "ERMA") made payable to Purvis's counsel Goldberg & Gage's client trust account as damages for alleged injuries and attorneys' fees, to be reported on Form 1099. Form W-9s shall be provided by both the law firm Goldberg & Gage and Purvis prior to delivery of the funds.
 - b. The Settlement Proceeds of one-hundred sixty-six thousand dollars and no cents (\$166,000.00) shall be payable during the 2013 calendar year as soon as the Employment Risk Management Authority (ERMA) has approved the one-hundred thirty-four thousand dollars and no cents (\$134,000.00) payment identified above and at least seven (7) days after Purvis has signed this Agreement in conformance with Section G 6 above and after

Purvis has tendered his resignation. In that regard, Purvis agrees to sign this Agreement no later than October 29, 2013.

- c. The Settlement Proceeds of one-hundred thirty-four thousand dollars and no cents (\$134,000.00) shall be paid after January 1, 2014 but not later than January 15, 2014, provided that Purvis has delivered to City's counsel, Liebert Cassidy Whitmore, the executed Form W-9s for Goldberg & Gage and Purvis.
 - d. The Settlement Proceeds of one-hundred thirty-four thousand dollars and no cents (\$134,000.00) is expressly contingent upon the approval of ERMA. Without said approval, there is not a release of claims as this payment is a material term for settlement.
 - e. No Party, including the attorneys for any Party, shall make any representations or warranty regarding whether the Settlement Proceeds identified in H.1.a.ii., i.e., the one hundred thirty-four thousand dollars and no cents (\$134,000) are subject to taxation. The City does not bear any responsibility for tax liability that may arise as a result of the \$134,000 in Settlement Proceeds. Purvis agrees to assume any responsibility for payment of taxes of any of the \$134,000 in Settlement Proceeds. Purvis agrees to indemnify and hold the City, its agents, attorneys and assigns, harmless from any and all tax liability which may become due as a result of the \$134,000 in Settlement Proceeds to him under this Agreement.
- 2. Purvis is entitled to review his personnel file pursuant to law. The City will Bate stamp the personnel file ("1" through the end of the document). The City shall provide a Bate stamped copy of the personnel file to Purvis.
 - 3. The City will not pay for any costs related to this year's International Chief's Conference.
 - 4. Purvis is eligible for cash-outs of his leave balances per the terms of the Successor Contract. Some of the accrued benefits may go into a VEBA account to pay for COBRA benefits or any eligible health benefits for Purvis and his family as required by the Successor Contract, signed agreements or City Resolution, Rules or Regulations.
 - 5. Purvis agrees to cooperate with any pending internal affairs investigations and/or any internal affairs investigations that will begin following his resignation to the extent he is involved as a witness. Purvis shall not be the subject or the accused in any such internal affairs investigations.
 - 6. Purvis agrees to testify at any disciplinary appeal hearing which appeal arose during his employment, one of which is currently tentatively scheduled for November 2013, in which Purvis is a witness only.

7. Any existing internal affairs investigations or personnel investigations where there are findings regarding the Chief will be purged as soon as allowed by law and in accordance with the City's document destruction policies. The City acknowledges that Purvis has never been given notice of any adverse findings in regard to any existing internal affairs investigations. These investigations shall not be placed in his personnel file. The investigations shall be placed in a sealed envelope only to be released by order of the court or written authorization from Purvis.
8. Purvis is placed on voluntary paid leave effective October 5, 2013 and shall remain so until his resignation date and payment of the one-hundred sixty-six thousand dollars and no cents (\$166,000.00) Settlement Proceeds described in Paragraph H.1.(b) of this Agreement which will not be paid until after he has exhausted the seven (7) day revocation period provided for in G.6 and H.1(b) of this Agreement and which will not be paid until after he resigns from employment with the City effective the date the ADEA revocation expires, i.e., within seven (7) calendar days of no later than October 29, 2013, which is November 6, 2013.
9. While Purvis is on voluntary paid leave of absence, he is relieved of all duties and subject to the following orders:
 - a. Purvis is relieved of any and all law enforcement duties;
 - b. Purvis is prohibited from performing any peace officer functions on behalf of the City of Banning;
 - c. Purvis is required to relinquish control over all City property, including but not limited to his badge, his identification card, City-issued service weapon(s), any City-issued phones or computers, and any and all keys/access cards to the Police Department/City facilities, as well as the City-owned vehicle;
 - d. Purvis is prohibited from accessing any electronic or other information maintained and/or stored on City/Department computer systems or other information storage devices. Purvis may, with the City Manager in attendance, retrieve any personal data from the City computer(s).
10. The City will pay for all JAMS mediation costs.
11. If for any reason Purvis is not paid the full \$300,000 in Settlement Proceeds, then he will be entitled to be reinstated to his job upon the return of any and all funds paid to him by the City related to his separation. Any and all other provisions of this Agreement will be null and void.
12. The City will arrange for Purvis to collect his personal affects.

13. After Purvis returns his Banning Police Department badges to the City, it will encase both of Purvis's badges, i.e., his regular badge and his Centennial badge if he requests that they both be encased or the City will encase whichever badge Purvis requests that the City encase. The encased badge(s) shall be his to keep as his personal property.
14. The City will not object to a Carry Concealed Weapon permit for Purvis.
15. The City and Purvis will prepare a joint press release regarding his separation.
16. The City will provide Purvis a positive reference from the City Manager.
17. Any reference inquiries shall be directed to, and responded to, by City Manager Andy Takata and/or the City Attorneys' office.

I. Purvis hereby expressly waives any and all claims now and forever that he has or may have for reinstatement to his position with the City. Purvis further agrees that he will not seek or maintain employment, independent contractor status, or any other business relationship with the City in any position or capacity whatsoever and that the City is entitled to reject, with or without cause, any application for employment or agreement for independent contractor status or any other business relationship with the City made by Purvis. Purvis further agrees that any rejection of any such application or offer made is not for a discriminatory or any other illegal purpose. Purvis further agrees that this Agreement constitutes a legitimate, non-discriminatory, non-retaliatory business reason for any and all refusals by the City to employ him at the City in any capacity.

III. GENERAL PROVISIONS

A. Each party shall bear its/his own costs, expenses and attorneys'/representatives' fees incurred in connection with the proceedings and/or events resulting in and/or preceding this Agreement, or in connection with any other claims made or investigated by either party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each of the parties hereto expressly waives any claim for recovery of any such costs, expenses or attorneys'/representatives' fees from the other party. Attorneys/representatives for all parties to this Agreement do likewise expressly waive any claim for recovery of costs, expenses and/or attorney's/representatives' fees from the opposing party(ies).

B. Purvis represents that he has not heretofore 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.

C. This Agreement is made and entered into in the State of California, and shall be governed, interpreted, and enforced under the laws of the State of California. The Parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within the County of Riverside, State of California. The Parties further agree that this Agreement may be used as evidence in any

subsequent proceeding in which any of the Parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations.

D. Each Party hereto agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Parties to this Agreement. It is further understood and agreed that if, at any time, a breach of any term of this Agreement is asserted by any Party hereto, that Party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including, but not limited to, damages, initially by way of mediation with Ret. Judge Dickran Tevrizian and, if necessary, from any court of competent jurisdiction in Riverside County.

E. No waiver by 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.

F. Each party hereto represents and agrees that he or it has carefully read and fully understands all of the provisions of this Agreement, and that he or it is voluntarily, without any duress or undue influence on the part of or on behalf of any party, entering into this Agreement.

G. Purvis affirms that, prior to execution of this Agreement, he has consulted with his legal counsel/representative concerning the terms and conditions set forth herein, and that he understands the advice provided to him.

H. City affirms that, prior to the execution of this Agreement, it has consulted with its legal counsel concerning the terms and conditions set forth herein, and that it understands the counsel provided to it.

I. This Agreement contains all of the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, not expressly set forth in this Agreement, are of no force or effect.

J. This Agreement has been jointly negotiated and drafted by counsel for the parties. The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties.

K. In the event that any one or more provisions of this Agreement shall be declared to be illegal, invalid, unenforceable, and/or void by a court of competent jurisdiction, such provision or portion of this Agreement shall be deemed to be severed and deleted from this Agreement but this Agreement shall in all other respects remain unmodified and continue in force and effect.

L. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A

photocopy or facsimile transmission of the Agreement, including signatures, shall be deemed to constitute evidence of the Agreement having been executed.

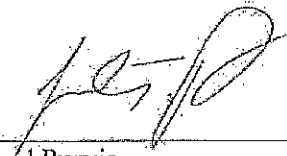
M. The October 4, 2014 Stipulation for Settlement shall be superseded by this Settlement Agreement.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE BY PURVIS OF ALL KNOWN AND UNKNOWN CLAIMS, OTHER THAN A WORKER'S COMPENSATION CLAIM OR INDUSTRIAL DISABILITY CLAIM.

IN WITNESS WHEREOF, the parties hereto have executed the Settlement Agreement and General Release.

Dated: 11-6-13


By:


Leonard Purvis

CITY OF BANNING

Dated: 11-6-13

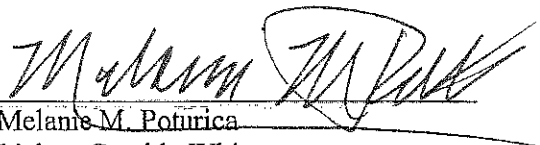
By:


Andy Takata
City Manager

APPROVED AS TO FORM:

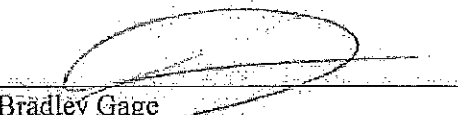
Dated: 11-22-13

By:


Melane M. Poturica
Liebert Cassidy Whitmore
Attorneys for the City of Banning

Dated: 11-6-13

By:


Bradley Gage
Goldberg & Gage
Attorneys for Purvis