

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

Elisa Umpierre,

Ref No. 67468

Charging Party,

vs.

**SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

City of Rochester,

Respondent.

This Settlement Agreement and Release of Claims ("Agreement") is made by and between Charging Party Elisa Umpierre ("Umpierre") and Respondent City of Rochester ("City"), collectively referred to herein as the ("Parties").

WHEREAS, on or about March 6, 2017, Umpierre filed a discrimination charge with the Minnesota Department of Human Rights ("MDHR") against the City; and

WHEREAS, the City has denied any liability or wrongdoing whatsoever relating to the allegations in Umpierre's discrimination charge; and

WHEREAS, in order to avoid the expense and uncertainty of continued litigation, the Parties desire to mutually resolve and settle all disputes among them, known and unknown, in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, the Parties voluntarily participated in mediation, which was held on June 28 and August 29, 2017 and reached a mediated settlement agreement.

NOW THEREFORE, in consideration of the recitals and promises made herein, the Parties agree as follows:

1. Non-admission. It is expressly understood and agreed that this Agreement does not constitute and shall not be construed as an adjudication or finding on the merits of any claim

or potential claim by Umpierre. Nor does this Agreement constitute or be construed as an admission of wrongful conduct or liability on the part of the City, or the City's current or former officials, employees, volunteers, agents, representatives, or affiliates.

2. Retirement. Umpierre agrees to retire her position as a Police Lieutenant on the first day after the City Council approves this settlement. Her retirement will be effective immediately. Upon her retirement, Umpierre will receive all wages and benefits to which she is entitled pursuant to the applicable collective bargaining agreement, other City policies, and/or applicable laws, including payment of her accrued vacation, sick, and compensatory time as well as payment of any pay increases for which she is or has been entitled but has not yet received, including without limitation backpay owed pursuant to a step increase that was effective as of May 25, 2017. These payments will be paid in the usual payroll manner and will be subject to the usual W-2 withholdings.

3. Personnel Documents: The City is governed by the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01 et al. Specifically, pursuant to Minnesota Statute § 13.43, subd. 2(4), the existence and status of a complaint are public data. As such, the existence and status of any complaints against Umpierre as well as any complaints by Umpierre against the City are public data. However, because there has not been a final disposition of discipline of Umpierre, pursuant to Minn. Stat. § 13.43, subd. 2(5), additional details about those complaints or any investigations are private data. Any investigative files regarding Umpierre will be maintained separately from her personnel file.

4. Payment. In settlement and consideration for the release of any and all claims, grievances, or complaints, asserted or unasserted, the League of Minnesota Cities Insurance Trust ("LMCIT"), on behalf of the City, agrees to pay the total sum of \$1,000,000 (One Million

and 00/100 Dollars), including a payment to Umpierre for the sum of \$600,000 (Six Hundred Thousand and 00/100 Dollars) and a payment to her attorneys, Halunen Law, for the sum of \$400,000 (Four Hundred Thousand and 00/100 Dollars). The checks shall be delivered to Charging Party's counsel no later than 10 business days from the date the Parties fully execute this Agreement. LMCIT will issue 1099 forms for these payments.

5. Mediator Fees. LMCIT/the City agree to pay the mediation fees associated with mediation of this matter on June 28 and August 29, 2017 before mediator Judith Bevis Langevin.

6. Tax Treatment. The City and LMCIT make no representations or warranties about any particular tax treatment of the payments by the state and/or federal taxing authorities. Umpierre enters into this Agreement only after consulting with her own attorney and/or tax advisor(s) as to the characterization and treatment of such payment. In the event a taxing authority asserts a claim for federal or state income taxes, social security taxes, unemployment taxes and/or Medicare taxes, Umpierre stipulates and agrees that neither the City nor LMCIT is responsible to said taxing authority for payment of that obligation, and Umpierre agrees to pay for any such obligation she would otherwise be obligated to pay had the payment been characterized differently. Umpierre further agrees to indemnify, defend, and hold harmless the City and LMCIT from those claims if asserted.

7. Release of Claims. In exchange for the above-referenced consideration set forth in Paragraphs 4 and 5, Umpierre for herself, hers heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the City, LMCIT, and their current and former directors, trustees, officers, agents, employees, successors, representatives, consultants, and assigns from any and all demands, debts, obligations, or claims that were or could have been raised by Umpierre and that arise from or relate in any way to Umpierre's civil

action and/or Umpierre's employment with the City, including, but not limited to, claims under the Age Discrimination in Employment Act (ADEA); Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA); the Genetic Information Nondiscrimination Act (GINA); 42 U.S.C. §1981, §1981a, §1983, §1985, §1988; the Older Workers Benefit Protection Act (OWBPA); the Minnesota Human Rights Act (MHRA); Minnesota's whistleblower statute, Minn. Stat. § 181.932; Minnesota's Veterans Preference Act (VPA); the Peace Officer Discipline Procedures Act (PODPA); Minnesota's open meeting law, Minn. Stat. § 13D.01 et. al; the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01 et. al; Minnesota Public Employer Labor Relations Act (MPELRA) and associated rights and privileges under the collective bargaining agreement; Minnesota's independent review statute, Minn. Stat. §179A.25; defamation; tortious interference with employment; invasion of privacy; intentional or negligent infliction of emotion distress; the City's police civil service commission; and/or any other claims under common law and any other applicable federal, state, or local statute or ordinance, existing at any time up to and including the date of this Agreement.

8. No Reemployment. To the full extent permitted by law, Umpierre agrees to waive any employment rights with the City that she might otherwise have now or in the future, including reinstatement or reemployment. Umpierre agrees she will not apply for employment with the City at any time in the future, and she will not seek and/or accept any employment, consulting, agency, and/or other working relationship with the City.

9. ADEA Consideration Period and Right to Rescind. Umpierre understands and acknowledges that pursuant to the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621, et seq, she may take up to 21 days from the date of receipt of this Agreement to consider it

and seek counsel to advise regarding the terms. Umpierre also represents that if she signs this Agreement before the expiration of the 21-day period, it is because she has decided that she does not need any additional time to consider whether she wishes to release any potential claims.

Umpierre understands and acknowledges that she has the right to rescind or revoke her release of any claims she may have under the ADEA if done within seven (7) calendar days from the date she signs this Agreement. Umpierre must communicate her rescission to Jana O'Leary Sullivan, League of Minnesota Cities, 145 University Avenue West, St. Paul MN 55103, either (a) by hand by 5:00 p.m. on the last day; or (b) by certified mail return receipt requested, postmarked by the last day.

10. Request to Withdraw Discrimination Charge. Within five business days of receiving the consideration described in Paragraph 4 of this Agreement, Umpierre agrees to request the withdrawal of her claim of discrimination from the Minnesota Department of Human Rights (MDHR).

11. Voluntary and Knowing Action. Each person signing this Agreement specifically acknowledges that he or she has read the terms of the Agreement in full, has had the opportunity to consult with an attorney, understands the terms of this Agreement, and understands to be bound thereby in full. Those signing below in the representative capacity fully affirm or verify that they are authorized to execute this Agreement on behalf of their respective principals and that it is their principals' intent to be bound thereby in full.

12. Entire Agreement. This Agreement constitutes the entire Agreement of the parties. This Agreement supersedes any and all prior agreements. No modification shall be binding on any of the parties unless it has been agreed to by the parties in writing, signed by

them, and identified as an amendment to this Agreement. There are no inducements or representations leading to the execution of this Agreement except as herein explicitly contained.

13. Governing Law. Interpretation and construction of this Agreement shall be governed by the laws of the State of Minnesota.

14. Severability. If for any reason a court of competent jurisdiction finds any provision of the Agreement to be unenforceable, the unenforceable provision shall be amended to the extent necessary to conform to applicable law. If it cannot be so amended without materially altering the intention of the parties, it shall be severed here from. In either event, the remainder of the Agreement shall continue in full force and effect.

15. Counterparts. This Agreement may be executed in multiple counterparts, which shall be construed together as if one instrument. In addition, any party shall be entitled to rely on any electronic or facsimile copy of a signature as if it were the original.

16. Government Data. All signatories to this Agreement acknowledge that the release of information concerning this matter is governed by the Minnesota Government Data Practices Act, Minn. Stat. § 13.43, subds. 2(a)(6) and 10.

17. Enforceable Mediated Agreement. The Parties acknowledge that in accordance with Minn. Stat. § 572.35, subd. 1, Mediator Langevin has advised them in writing (a) the mediator had no duty to protect their interests or provide them with information about their legal rights; (b) signing this mediated Agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing this mediated Agreement if they are uncertain of their rights. The Parties acknowledge that this Agreement is a binding, enforceable agreement.

IN WITNESS WHEREOF, the City of Rochester and Elisa Umpierre have approved
and executed this Settlement Agreement and Release of Claims.

Date: Sept. 18, 2017

Elisa Umpierre
Elisa Umpierre

Date: Sept. 19, 2017

CITY OF ROCHESTER

Ardell F. Brede
By: Ardell F. Brede
Its: Mayor

Date: Sept. 19, 2017

Anissa V. Hollingshead
By: Anissa V. Hollingshead
Its: City Clerk

APPROVED AS TO FORM
and EXECUTION

Jerry J. Hall
Rochester City Attorney