

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made by and among Terrell Clayton ("Clayton") and the City of Colorado Springs. Clayton and the City of Colorado Springs shall be referred to collectively as the "Parties", except where otherwise specified.

RECITALS

A. On November 2, 2017, Clayton was filming the secured parking lot of the Colorado Springs Police Department Falcon substation in Colorado Springs, Colorado. City of Colorado Springs police officers contacted Clayton (the "Incident").

B. The Parties deem it to be in their best interest to reach a complete resolution of any and all potential claims (the "Claims") that Clayton may have against the City of Colorado Springs and any of its current or former entities, elected officials, officers, employers, successors, assigns, attorneys, employees, agents and servants occurring up to the date of this Agreement on the terms set forth herein.

AGREEMENT AND RELEASE

Release, Covenant Not to Sue, Hold Harmless, Indemnification and Dismissal of Lawsuit

1. Clayton agrees irrevocably and unconditionally to release and forever discharge the City of Colorado Springs, the Colorado Springs Police Department, and any of their current or former entities, elected officials, officers, employers, successors, assigns, attorneys, employees, agents and servants (collectively and hereinafter, the "City") from any and all claims pursuant to any federal or state statute, constitution, common law, contract or otherwise, or in equity, known and unknown, foreseen and unforeseen related to the Claims.

2. Clayton represents and warrants that, other than that which is set forth in the Recitals to this Agreement, he has not filed or caused to be filed or asserted the Claims with any court or agency and agrees that he will not file against City the Claims in or with any court or agency. Clayton hereby declares and represents that, with the exception set out herein, no other person, firm, or corporation has received any assignment, subrogation, lien, including but not limited to attorney lien, or other right of substitution to the Claims, or that to the extent such assignment, subrogation, lien, or other right of substitution exists, the same has been waived, resolved, or otherwise disclosed. In the event City is subjected to further demands related to the Claims by any person, firm, or corporation under any actual or purported lien or right of substitution, including any lien for medical expenses, attorney fees or costs, Clayton will hold City harmless from any such claims or demands and indemnify and defend City from any judgment obtained by reason of such purported lien or right of substitution.

3. Clayton understands and agrees that he is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided pursuant to it. Clayton agrees that City has provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or its tax reporting or payment obligations for the monetary

consideration set out herein.

4. Clayton further warrants that he fully realizes that he may have sustained unknown and unforeseen losses; fees; costs; or expenses and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by Clayton, which resulted or may or will result from the above-mentioned Claims and all matters incident or related thereto, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this Agreement was executed without reliance upon any statement or representation by City, and Clayton is legally competent to execute this Agreement. Clayton accepts full responsibility and assume the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, known or unknown, and all matters incident and related thereto applicable to the Claims and any potential claims Clayton has or may have against the City.

Consideration

5. Within thirty (30) days of the execution of this Agreement, the City of Colorado Springs agrees to pay the total amount of FORTY ONE THOUSAND DOLLARS (\$41,000.00) (the "Settlement Sum") in the form of a check made payable to Clayton and the KILLMER, LANE & NEWMAN, LLP COLTAF account in the amount of \$41,000.00 (payment shall be delivered to the office of KILLMER, LANE & NEWMAN, LLP).

6. The City of Colorado Springs will ensure payment of all mediation costs invoiced by the Judicial Arbiter Group for the April 27, 2018 mediation of this matter.

7. By July 1, 2018, the following will be added to Colorado Springs Police Department General Order 1551, section 4:

"Taking photographs or recording from a public place in and of itself does not constitute suspicious activity."

8. By September 15, 2018, the City of Colorado Springs will create and publish a roll-call video addressing the First Amendment right to record police activity, and will require that its officers view the video by December 31, 2018.

9. The City of Colorado Springs will reissue a November 6, 2017 bulletin on public contacts on an annual basis for five years. The bulletin may be revised to reflect changes based on policy or the law. KILLMER, LANE & NEWMAN, LLP shall be notified of any revision.

10. It is agreed that consideration for this Agreement as set forth herein, shall be full and final payment for all Claims released herein and all claims that might have been asserted for the actual physical, emotional and economic injuries suffered by Clayton in any state or federal judicial or administrative forum up to the date of execution of this Agreement, including any claims for attorney fees and costs.

Voluntariness, Denial of Liability, Entire Agreement

11. Clayton has carefully read the above and foregoing Agreement and knows the contents thereof and has signed the same as his free and voluntary act and after having the opportunity to have the same explained by counsel. Clayton expressly states that he has been advised of his right to consult additional professionals of his choice, including lawyers and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatever kind and nature, which Clayton may have or will incur, whether suspected or unsuspected. Clayton further expressly understands and agrees that the signing of this Agreement shall be forever binding and no rescission, modification, or release of Clayton from the terms of this Agreement will be made for any mistake.

12. It is expressly understood and agreed that the acceptance of the above-mentioned consideration is in full accord and satisfaction of disputed claims and is not to be construed in any way as an admission of liability on the part of City, but, to the contrary, City specifically asserts that no wrongdoing, misconduct, or liability on account of the Incident or any matters related or incidental thereto, or otherwise, occurred or was established in a court of law, and it is further understood and agreed that all agreements and understandings between the Parties are embodied and expressed herein and that the terms of this Agreement are contractual and not mere recitals.

13. This Agreement is not intended to be an admission of any fact or issue alleged by any party relating to the Claims.

14. This Agreement, once executed, including the Recitals and all attachments to this Agreement, contain the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior oral and written understandings and agreements between the parties.

15. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument representing this Agreement of the Parties to this Agreement.

***** Remainder of page intentionally left blank. *****

16. Clayton certify that he has fully read and understand the foregoing Agreement and hereby affix his signature this _____ day of _____, 2018, as his own free and voluntary act.

TERRELL CLAYTON

STATE OF COLORADO)
) ss.
COUNTY OF _____)

SWORN TO AND SUBSCRIBED by Terrell Clayton this _____ day of _____, 2018. WITNESS my hand and official seal.

Notary Public

I, _____, as attorney for Terrell Clayton, have reviewed the within Settlement Agreement and Release with my client and have fully explained each and every term, condition, limitation, and obligation set forth herein Terrell Clayton and believe that he is competent and understand the same, and I further signify my approval of the within Settlement Agreement and Release by my signature below.

Date signed:

Andrew McNulty
Killmer, Lane & Newman LLP
1543 Champa Street, Suite 400
Denver, Colorado 80202

The City of Colorado Springs

Date signed:

John W. Suthers
Mayor

Approved as to form:

W. Erik Lamphere, Esq.