

SETTLEMENT AGREEMENT AND GENERAL RELEASE WITH JAVIER ORTIZ

This Settlement Agreement and General Release (hereinafter "Settlement Agreement" or "Agreement") is made and entered into this 2nd day of May, 2023, by and between JAVIER ORTIZ (hereinafter "ORTIZ"), his agents, heirs, executors, administrators, successors and assigns and anyone who may claim by and through him, and the CITY OF MIAMI (hereinafter "CITY"), a municipal corporation within the State of Florida. Collectively, the Parties be referred to as "the Parties." The Parties agree as follows:

WHEREAS, the Plaintiff has numerous pending grievances and lawsuits against the CITY (hereinafter referred to as "Pending Litigations").¹

WHEREAS, for the purposes of avoiding costly litigation and in order to reach an amicable resolution of every matter referenced in foot note 1, the Parties desire to reach a final settlement on all causes of action;

NOW THEREFORE, in consideration of the covenants, representations and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties ORTIZ agrees to be legally bound by the following terms and conditions which ORTIZ constitute full settlement of any and all claims, attorneys' fees, and any and all costs which arise out of any allegation raised by ORTIZ in the Pending Litigations:

1. CONSIDERATION. In consideration for execution of this Settlement Agreement, and compliance with the promises made herein, the CITY agrees to the following:
 - a. The CITY agrees to reinstate ORTIZ to the position of Captain of Police.
 - b. The CITY agrees to take all actions necessary to reinstate ORTIZ from the date of his original termination to the date he is returned administratively reassigned on May 2, 2023, as if there was no break in service. In relation to his restoration, the CITY further agrees as follows:
 - i. The CITY agrees to pay ORTIZ all backpay, including all pay incentives to which he would have been entitled, at his Captain rate of pay from the time he was originally terminated to May 2, 2023.
 - c. The CITY agrees ORTIZ will be administratively reassigned to the Office of the Chief on the C-shift. ORTIZ's point of contact will be the Chief of Police. ORTIZ will be available by phone for consultation on labor matters to the Chief of Police for the life of this agreement.
 - d. The CITY agrees to grant ORTIZ the ability to work outside employment unless such employment is for another police agency or would be in contradiction to the current

¹ Grievance No. 22-05, Grievance No. 22-270, EEOC Charge No. 510-2021-03103. Including Internal Affairs Case Number C21-162, which shall be closed upon ORTIZ's reinstatement as unsustainable.

- departmental order(s), City's administrative policies, the FOP collective bargaining agreement, or any Miami-Dade ordinance on outside employment.
- e. The CITY agrees to restore ORTIZ's vacation and sick balance that ORTIZ would have accrued from the date of his termination to his return date.
 - f. The CITY agrees to restore ORTIZ's seniority as though there was no break in service.
 - g. Upon reinstatement, the CITY agrees to provide ORTIZ with 70 hours of compensatory time in lieu of holiday pay.
 - h. The CITY agrees to rescind ORTIZ's reprimand terminating his employment. The CITY will replace it with a new reprimand that sustains ORTIZ for one charge of improper procedure for the July 31, 2021, incident only.
 - i. The CITY agrees that it will be bound by the nondisparaging agreement and public statement specifically stated in Paragraph 12 when discussing this Settlement Agreement, any terms of this Settlement Agreement or ORTIZ in general.

In return for the foregoing, ORTIZ agrees to the following:

2. In exchange, ORTIZ agrees to the following:
 - a. ORTIZ will enter the D.R.O.P. program on November 7, 2023.
 - b. ORTIZ agrees that the last day of his employment with the CITY will be on November 7, 2025.
 - c. ORTIZ agrees that, while he is administratively reassigned, he waives the issuance of all police equipment including a take home vehicle.
 - d. ORTIZ agrees that, while he is administratively reassigned, he will be reissued his police identification and badge. He will only utilize his police power in the event someone is using or threatening to use deadly force and if he reasonably believes that he must act to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony.
 - e. ORTIZ agrees that, while he is administratively reassigned, he will not work any extra-duty assignments.
 - f. ORTIZ agrees that, while he is administratively reassigned, he will not be permitted to work any overtime, unless subpoenaed for any functions related to his employment outside of his work hours.
 - g. ORTIZ agrees that he will not conduct union business on behalf of the Fraternal Order of Police or run for union office during the life of this Settlement Agreement.
 - h. ORTIZ agrees to voluntarily withdraw all pending grievances and dismiss all pending lawsuits against the CITY, identified in footnote 1.
 - i. ORTIZ agrees that he will be bound by the nondisparaging agreement and public statement specifically stated in Paragraph 12 when discussing this Settlement Agreement, any terms of this Settlement Agreement or the CITY in general.
3. MUTUAL GENERAL RELEASE OF CLAIMS. ORTIZ, his agents, heirs, executors, administrators, successors, assigns, agents, representatives and anyone who could claim by and

through ORTIZ do hereby forever unconditionally and irrevocably mutually release, settle, acquit, remise, satisfy and discharge the CITY, any of its elected officials, agents, officers, or employees from all claims, liabilities, demands and causes known or unknown, fixed or contingent, which he may have, or claim to have, against the CITY and any of its agents, officers, elected officials or employees of any and all claims, demands, actions, causes of action, damages, expenses, or costs whatsoever, whether known or unknown, which ORTIZ had, has, or may have including, but not limited to any of the following:

- a. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2, et seq.;
- b. Age Discrimination in Employment Act, 29 U.S.C. §621, et seq.;
- c. Sections 1981 and 1982 of Title 42 of the United States Code;
- d. Employment Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq.;
- e. Americans with Disabilities Act of 1990, 42 U.S.C. §12111, et seq.;
- f. Fair Labor Standards Act of 1938, 29 U.S.C. §201, et seq., and related wage and hour provisions under Florida law;
- g. Family Medical Leave Act of 1993, 28 U.S.C. §2601, et seq.;
- h. Florida Private Whistleblower Act, §448.101, et seq., and related whistleblower provisions under federal law;
- i. Torts of all kinds, including but not limited to misrepresentation, negligence or otherwise, fraud, defamation, libel, slander, interference with an advantageous business relationship, battery, negligence, intentional infliction of emotional distress, negligent security, invasion of privacy, negligent hiring, negligent retention;
- j. Breach of contract;
- k. Any public policy, contract, debt, or action based on common law; and
- l. Any and all civil claims seeking legal relief, equitable relief, pain, mental and physical suffering, past, present and future damages, and permanent disability, loss of earnings, earnings capacity, medical (and mental health) bills, expenses, hospitalization expenses, past, present and future attorney fees, or liens, any and all other insurers' claims, subrogated interests, either by contract, statute, and/or by common law, loss of service and/or companionship and loss of substituted services, including, but not limited to, all compensatory and punitive damages.

ORTIZ acknowledges and agrees that the releases set forth herein are general releases which expressly waive and assume the risk of any and all civil claims for damages which exist as of the date of the execution of this agreement, but of which the Parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect either or both Parties' decision to enter into this Settlement Agreement.

4. **ACKNOWLEDGMENTS.** The Parties acknowledge that they have read and understood this Settlement Agreement and specifically acknowledge that they have been advised to consult with an attorney and have had sufficient opportunity to do so prior to executing this Agreement.

5. **AFFIRMATIONS.** ORTIZ affirms that he has been paid and/or has received all past compensation, wages, bonuses, commissions and/or benefits to which ORTIZ is entitled to and

that no other past compensation, wages, bonuses, commissions and/or benefits are due to him, except as provided in this Settlement Agreement. ORTIZ affirms that he has not filed, caused to be filed, or is presently a party to any claim, complaint, appeal, action, legal suit or administrative proceedings with any agency, either individually or jointly, including but not limited to the U.S. Equal Employment Opportunity Commission, U.S. Department of Labor, Florida Commission on Human Relations, Florida Department of Labor and Employment Security, or any other federal, state, or local agency, other than the current law suit styled as the Pending Litigations.

6. GOVERNING LAW AND INTERPRETATION. This Settlement Agreement shall be governed by the laws of the State of Florida without regard to its conflict of laws provision.

7. NO ADMISSION OF WRONGDOING. The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for same shall be deemed or construed at any time for any purpose as an admission by the CITY of any liability or unlawful conduct of any kind.

8. BREACH OF AGREEMENT. The General Release provision set forth above ORTIZ is not construed to cover any breaches or violations of the terms and provisions of this Settlement Agreement. The Parties agree that all disputes, controversies, or claims arising out of or relating to this Settlement Agreement, or the breach thereof, shall be resolved and determined by a court of competent jurisdiction in Miami-Dade County, Florida. Each party shall bear their own attorney's fees and costs associated with participation in arbitration pursuant to this paragraph as well as any subsequent legal proceedings to enforce an arbitration award.

9. ELECTRONIC COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request.

10. AMENDMENT. This Settlement Agreement may not be modified, altered, or changed except upon express written consent of both Parties wherein specific reference is made to this Agreement. Any modification of this Settlement Agreement must be by written instrument signed by all Parties.

11. SEVERABILITY. Each provision of this Settlement Agreement is intended to be fully severable. Should any provision of this Separation Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release provision set forth above, such provisions shall immediately become null and void, leaving the remainder of this Separation Agreement in full force and affect. However, should a court of competent jurisdiction declare the general release provision unenforceable for any reason, the case shall remain settled, and Parties shall redraft the provision to make it enforceable.

12. NONDISPARAGING/PUBLIC STATEMENT. The Parties agree that neither Party shall make any disparaging statements about either the CITY or ORTIZ. When asked about this Settlement Agreement, the terms of the Settlement Agreement, or about the CITY or ORTIZ, both Parties shall respond with the following:

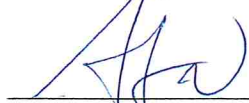
BOTH PARTIES: The South Florida Police Benevolent Association on behalf of Captain Javier Ortiz and the City of Miami have reached a resolution to all pending matters regarding the employment of Captain Ortiz. Both parties believe that is in the best interests of the citizens of the City of Miami and Captain Ortiz.

13. ENTIRE AGREEMENT. This Settlement Agreement constitutes the entire agreement between the Parties, and fully supersedes any and all prior agreements or understandings between the Parties.


14. ORTIZ states that he has carefully read this document and that he fully understands its contents, that he is of legal age, that ORTIZ has signed this document on his own free act and has not been influenced in making entering into this Settlement Agreement by any representation of the party or parties being released.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the Effective Date above.

For the City:

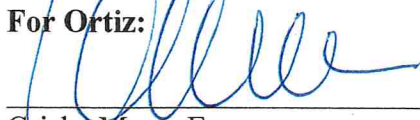


Arthur Noriega, V.
City Manager



Victoria Méndez, Esq.
City Attorney

For Ortiz:



Griska Mena, Esq.

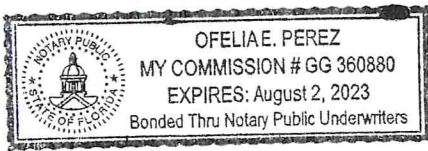


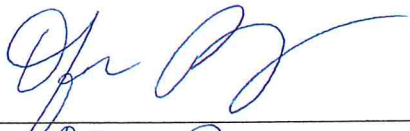
Javier Ortiz

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE) SS:

ON THIS 2 day of May, 2023, before me personally appeared JAVIER ORTIZ, known to me to be the person who executed the foregoing Settlement Release and acknowledge that he/she executed as his/her free act and deed.



SIGNATURE 
PRINT Ofelia Perez