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CITY OF TEMPE
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SENT VIA FIRST-CLASS MAIL
AND EMAIL (ANDREW_CHING@TEMPE.GOV)

Andrew B. Ching
Tempe City Manager
Tempe City Hall
31 East 5th Street
Tempe, Arizona 85281

Re: Notice of Claim
Tom Ryff v. City of Tempe

Dear Mr. Ching:

As you know, Tom Ryff was continuously employed as a law enforcement officer by the City of Tempe for thirty-seven years, including serving his last nine years with the City as its Police Chief. As you also know, Chief Ryff's service to the City was indisputably superlative. See attached Exhibit A.

After devoting his adult professional life to the City of Tempe, when Chief Ryff finally retired from the Department in the Summer of 2015, he entered into a "Retirement Agreement" with the City dated June 23, 2015. See attached Exhibit B. As you recall, you (in your capacity as City Manager) and Judith Baumann (in her capacity as City Attorney) drafted and signed the Retirement Agreement on behalf of the City.

Pursuant to Paragraph 1.4 of the Agreement, the parties agreed not to "disparage, defame, or besmirch the reputation, character, image, or services of the other party" in any way. Specifically, Paragraph 1.4 of the Agreement provides that:

> 1.4 Non Disparagement. *Neither of the Parties* (which for the purposes of this paragraph includes any Tempe employee or elected official) *will* disparage, defame, or besmirch the reputation, character, image, or services of the other party, or *make any comments*

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> *or statements that reflect adversely or negatively upon the reputation, character, image, or services of the other party.* This paragraph will not be construed to prevent any party from making truthful statements in response to direct questions asked pursuant to a valid and binding subpoena during any future legal proceedings, or from making truthful statements in connection with the fulfillment of any reporting, disclosure, or similar obligations; provided, however, that if any party receives a valid and binding subpoena or similar request or order that would seek or require such party to make statements or provide information about any other party, such party shall provide written notice and a reasonable opportunity to object.

(Emphasis added.) Of course, Chief Ryff took the promises that he made to the City in the Agreement very seriously. Accordingly, Chief Ryff never criticized the City or its employees in anyway.

However—unfortunately for Chief Ryff and his family—the City did not keep its side of the bargain.

After Chief Ryff retired from the City, he was still relatively young and wanted to stay active in law-enforcement and continue to earn a livelihood for his family. The Tempe Union High School District learned of Chief Ryff's professional availability and recruited him to serve in the position of the District's "Executive Director of Student Affairs and District Safety." Specifically, the Superintendent of the District, Dr. Kenneth Baca, met with Chief Ryff in November and discussed the job with him. After an extended discussion, Dr. Baca expressed his intent to hire Chief Ryff for the position.

Because Chief Ryff was uniquely qualified for the position based on his decades of experience in law enforcement in the City of Tempe, Dr. Baca proceeded to request and obtain the consent of the District's Governing Board to hire Chief Ryff for the position and informed Chief Ryff of that fact. Of course, Chief Ryff was elated with the opportunity to get back to work protecting the public school kids of Tempe.

As a final preliminary to hiring Chief Ryff, Dr. Baca contacted the City's new Chief of Police, Ms. Sylvia Moir, to discuss Chief Ryff's impending employment with the District.

Soon after their initial discussion regarding Chief Ryff, Chief Moir and Dr. Baca had a telephone conversation and Chief Moir told Dr. Baca that her staff would be "uncomfortable" working with Chief Ryff in his proposed new position with the District. Chief Moir also told Dr. Baca that she needed to "move the organization forward" and appointing Chief Ryff to the open position with the District was not consistent with this direction.

Soon after Chief Moir's conversation with Dr. Baca, Dr. Baca told Chief Ryff that based upon Chief Moir's negative comments, he was regrettably rescinding the District's offer of employment to Chief Ryff.

Not only did Chief Moir's irresponsible, reckless comments to Dr. Baca "reflect negatively upon . . . [Chief Ryff's] services," they cost him a great job in direct breach of the Retirement Agreement that the City drafted and signed.

As a direct and proximate result of Chief Moir's negative comments, Chief Ryff lost a job which paid over $109,000.00 a year, excluding related insurance and retirement benefits. Because Chief Ryff intended to work for the District at least until he reached the age of sixty-five, Chief Moir's negative reference has cost Chief Ryff (and his family) approximately $1,000,000.00, excluding attorney fees and related costs.

Tom Ryff has devoted the entirety of his professional life to protecting the rights of the people. Consistent with his life's work, he cannot and will not let the City violate his rights, besmirch his reputation and cripple his right to find a job and earn a living. This letter is to advise you that Chief Ryff is willing to settle his claim against the City of Tempe for the amount of $1,000,000.00. If the City chooses to attempt to refuse to accept responsibility for its conduct, Chief Ryff will seek justice against the City in the courts.

Thank you for your attention to this matter.

Sincerely,

Stephen Montoya

cc: Brigitta Kuiper
Tempe City Clerk
Tempe City Hall
31 East 5th Street, 2nd Floor
Tempe, Arizona 85281
(Via Process Service)

Judith R. Baumann
Tempe City Attorney
21 East 6th Street, #201
Tempe, Arizona 85281
Judi_baumann@tempe.gov
(Via First-Class Mail and Email)

EXHIBIT A

City of Tempe
P.O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
480-350-8575

Andrew B. Ching
City Manager

To Whom It May Concern:

It is a genuine pleasure and honor for me to write this letter for Tom Ryff. In my capacity as the Tempe City Manager at The City of Tempe, I have worked closely with Tom for over 3 1/2 years, and in other capacities with the city for nearly 20 years. Tom worked for over 36 years with the Tempe Police Department, including nearly 10 years as Chief. In that time, Tom has proved himself a hard-working and responsible individual and I am delighted to provide this letter of recommendation on his behalf.

I have managed Tom in stressful and complicated matters requiring high levels of intelligence and understanding: he met every challenge, deadline, and goal presented and tackled every problem with grace and ease. Many of the solutions Tom proposed were insightful and practical, and he showed a remarkable capacity for breaking large issues into manageable segments.

Needless to say, the job of Police Chief in the 21st Century, in a dynamic City like Tempe, is a complicated and often thankless, yet critical function. Under Tom's leadership, the Department flourished on many levels, especially regarding the integration of the latest technology for crime solving, and was widely considered one of the top police agencies in the region at the time of his retirement.

Tom's talents extended beyond the Police Department, to his interactions with all other departments. He was a cooperative and attentive team player. His actions consistently inspired and motivated his peers. He understood intuitively when colleagues were confused, lost, or off-track, and brought those individuals back on task without judgment.

In the years that I have known and worked with Tom, I have developed enduring respect for both his work ethic and his problem-solving abilities. I can confidently say that Tom would make a positive and beneficial addition to your company and he has my highest recommendation.

If you have any further questions with regard to his background or qualifications, please do not hesitate to call me at the number listed above.

Sincerely,

Andrew B. Ching

EXHIBIT B

RETIREMENT AGREEMENT

THIS RETIREMENT AGREEMENT, (the "**Agreement**") is entered into and made effective on this 23rd day of June, 2015, by and between the City of Tempe, Arizona, an Arizona municipal corporation ("**Tempe**" or the "**City**") and Tom Ryff ("**Ryff**") (hereafter collectively referred to as "**Parties**").

RECITALS

A WHEREAS, Ryff is employed as the Police Chief with Tempe; and

B. WHEREAS, Ryff has notified the City of his intent to retire from his position as Police Chief; and

C. WHEREAS, the Parties wish to enter into this Agreement to ensure an orderly and efficient transition for Ryff's successor into that position.

SECTION I
AGREEMENTS

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions contained herein, Ryff and Tempe hereby stipulate and agree as follows:

1.1 **Retirement**. On or before July 1, 2015, Ryff will announce his intention to retire from his position as Police Chief. Ryff's final day serving as Police Chief will be December 1, 2015, after which he will transition to a consultant position as described in paragraph 1.2.

1.2 **Accrued Benefits**. Effective December 2, 2015, Ryff will be permitted to run all of his accrued leave including personal, medical, executive and sabbatical, and shall continue to receive all current benefits. During the time in which Ryff is running his accrued leave, Ryff shall be required to make himself available as a consultant to the City. Upon the expiration of the last of Ryff's accrued leave, his employment, and his obligations to act as a consultant, will end. At that time, Tempe shall pay Ryff the equivalent of 26 weeks total compensation.

1.3. **Acknowledgement**. Ryff acknowledges and agrees that he is not entitled to receive, and expressly waives any right to payment or receipt of any additional employee benefits, monies, consideration or other compensation from Tempe for entering into this Agreement except for that which is set forth in the City Tempe Personnel Rules and Regulations and any additional consideration set forth in the paragraphs herein.

1.4 **Non Disparagement**. Neither of the Parties (which for the purposes of this paragraph includes any Tempe employee or elected official) will disparage, defame, or besmirch

the reputation, character, image, or services of the other party, or make any comments or statements that reflect adversely or negatively upon the reputation, character, image, or services of the other party. This paragraph will not be construed to prevent any party from making truthful statements in response to direct questions asked pursuant to a valid and binding subpoena during any future legal proceedings, or from making truthful statements in connection with the fulfillment of any reporting, disclosure, or similar obligations; provided, however, that if any party receives a valid and binding subpoena or similar request or order that would seek or require such party to make statements or provide information about any other party, such party shall provide written notice and a reasonable opportunity to object.

1.5 **Ryff's Release.** Except with respect to claims and rights arising under the Age Discrimination in Employment Act of 1967 (the "**ADEA**"), Ryff acknowledges, warrants and agrees to irrevocably release and discharge Tempe and its agents, officers, directors, elected and appointed officials, employees and affiliated entities or successors in interest (collectively, "**Tempe**") from and against all present or future claims, rights, charges, damages and actions of every kind, known or unknown, whenever they arose, arising out of or related to Ryff's employment with Tempe and the cessation thereof, including but not limited to any claim, right, charge or action arising under any federal, state or local discrimination statute, including but not limited to, Title VII of the Civil Rights Act of 1964, the Reconstruction Era Civil Rights Act, the Equal Pay Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Fair Labor Standards Act, the Arizona Civil Rights Act, the Arizona Employment Protection Act or under any other provision or theory of law or contract, either statutory or common law, including but not limited to wrongful termination, breach of contract or breach of the covenant of good faith and fair dealing or defamation.

Without limiting the generality of the foregoing, it is understood and agreed that this Agreement constitutes a full and final release by the Parties hereto covering all known, unknown, anticipated and unanticipated injuries, debts, claims or damages to all the Parties which have arisen, or may have arisen, in connection with Ryff's employment with Tempe, as well as those injuries, debts, claims or damages not known or disclosed which have arisen, or may have arisen, from said employment relationship.

1.6 **Waiver of Claims and Rights Under ADEA.** Ryff acknowledges, warrants and agrees to irrevocably release and discharge Tempe and its agents, officers, directors, elected and appointed officials, employees and affiliated entities or successors in interest (collectively, "**Tempe**") from and against all claims, rights, charges, damages and actions of every kind, known or unknown, arising under the ADEA, which arose on or before the effective date of this Agreement, and further arising out of or related to Ryff's employment with Tempe and the cessation thereof. Ryff acknowledges, warrants, and agrees that he has been advised to consult with an attorney or other legal representative prior to signing this Agreement; that under the ADEA, he has been given and has the right to take twenty-one (21) days to consider this Agreement before signing it; and that he may, within seven (7) days after signing this Agreement, revoke his agreement to waive any rights or claims under the Age Discrimination in Employment Act of 1967. In the event Ryff executes this Agreement prior to the expiration of twenty-one (21) days, he acknowledges that he has, for the purpose of expediting settlement of this matter, expressly waived his right to take twenty-one (21) days to consider this Agreement.

In the event Ryff exercises his right under the ADEA to revoke this Agreement, written notice of Ryff's intent to revoke this Agreement shall be delivered to the City of Tempe, c/o City Manager, P.O. Box 5002, Tempe, Arizona 85280. Ryff acknowledges and agrees that if he revokes the Agreement, none of the provisions, specifically the consideration granted under paragraphs 1.1 and 1.2, shall be effective or enforceable against Tempe.

1.7 **Indemnification.** Each party agrees to defend, hold harmless and the other party (including and its agents, officers, directors, elected and appointed officials, employees and affiliated entities or successors in interest) from and against any and all claims, loss, costs, damages or expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of Ryff's breach of this Agreement. Ryff further agrees that to the extent that he is married at the time of executing this Agreement, that he will indemnify Tempe from any claims, loss, damages, causes of action or any other cost or expense raised by his spouse, including but not limited to loss of consortium, based on any claims, charges, damages, rights, events or actions released in this Agreement.

SECTION II
GENERAL TERMS

2.1 **Severability.** 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 provision shall be deemed not to be a part of this Agreement.

2.2. **Binding Effect.** This Agreement shall be binding upon Ryff, and upon his heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of Tempe, and each of them and to their heirs, representatives, executors, administrators, successors and assigns.

2.3 **Outside Employment.** After December 1, 2015, Ryff may seek outside employment consistent with City of Tempe Personnel Rule 401.D.

2.4 **Representation/Attorneys' Fees.** Tempe and Ryff acknowledge and agree that each has been, or has had the opportunity to be, represented by an attorney in connection with the preparation, execution and delivery of this Agreement. In the event legal proceedings are brought or an attorney is retained by any party to the Agreement to enforce the terms of this Agreement, or for the interpretation of any provision herein in dispute, or to participate in any bankruptcy or reorganizing proceeding involving the other party, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. If a lawsuit is instituted, the judge of the court shall fix reasonable attorneys' fees and costs. "Legal Proceedings" shall include, but not limited to, appeals from a lower court judgment as well as proceedings in state, federal or bankruptcy court. The "prevailing party" as used in the context of proceedings: (i) in the bankruptcy court means the prevailing party in an adversary proceeding or contested matter, and all other actions taken by the non-bankruptcy

party which are reasonably necessary to protect its rights under this Agreement; and, (ii) in any other court proceeding other than a bankruptcy court means the party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which the party sought.

2.5 **Governing Law.** Except where preempted by the laws of the United States, this Agreement shall be deemed to be made under, governed by, and construed in accordance with the laws of the State of Arizona. Proceedings to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court of Maricopa County, Arizona and for this purpose each party hereby expressly and irrevocably consents to the jurisdiction of said court.

2.6 **Waiver.** No waiver of any of the terms or conditions of this Agreement, and no waiver of default or failure of compliance, shall be effective unless in writing, and no waiver furnished in writing shall be deemed a waiver of any other term or provision or any future condition. Failure of any party to exercise any right, remedy or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy or option with respect to the continuance of any such breach, or any subsequent or different breach.

2.7 **Captions.** Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement, shall not be deemed to define, limit, amplify or alter any provisions hereof, and shall not be deemed relevant in construing this Agreement.

2.8 **Interpretations.** To the extent permitted by the context in which used, (i) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neutral, and vice versa, and (ii) references to "persons" or "parties" in this Agreement shall be deemed to refer to natural persons, corporations, limited liability companies, general and limited partnerships, trusts and all other entities. No listing of specific instances, items or matters in any way limits the scope or generality of any portion of the text in this instrument where found, and any use of the word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." This Agreement is to be interpreted as a whole, in accordance with its fair meaning and in the manner which will most closely achieve the apparent intention of the parties as expressed herein, without application of any rule or presumption requiring construction against the party with primary drafting responsibility therefore.

2.9 **Recitals.** The parties acknowledge the accuracy of the Recitals set forth above in this Agreement and hereby adopt, approve and incorporate each of them herein as agreements of the parties.

2.10 **Amendments.** No provision of this Agreement may be amended, modified, waived, rescinded, deleted or supplemented except by a written document executed by the party against whom enforcement of such amendment, modification, waiver, rescission, deletion, supplementation, or termination is sought.

2.11 **Complete Agreement/Integration/Merger.** This Agreement and any document(s) executed contemporaneously herewith, if any, represents and contains the final and

complete agreement between the parties hereto with respect to the subject matter hereof. All prior agreements, warranties, representations, inducements, promises or understandings (whether oral or written, express or implied), if ever they existed, are hereby revoked and have been superseded by this Agreement and any document(s) executed contemporaneously herewith or have been merged therein.

2.12 **Policy.** This Agreement does not imply, and shall not be construed to be, official Tempe policy with respect to the resolution of the issues in dispute herein. This Agreement shall not be admissible in any other proceeding, except proceedings brought to enforce the terms of this Agreement.

2.13 **Breach.** During the term of this Agreement, Ryff may only be terminated based on a finding of cause pursuant to the City's Personnel Rules of conduct for employees. Additionally, while Ryff is serving as Police Chief during the term of this Agreement, he will be required to perform the duties of Chief in accordance with the generally accepted standards of conduct for police chiefs. A deviation from the standard conduct for police chiefs or violation of Personnel Rule 406, shall be determined by the City pursuant to an investigation conducted in conformity with the Personnel Rules. A sustained violation will be considered a material breach of this Agreement, and is not subject to review by the City's Merit System Board.

2.14 **Termination.** This Agreement shall be subject to cancellation by Tempe pursuant to A.R.S. §38-511 relating to Conflicts of Interest.

2.15 **Acknowledgement.** Ryff acknowledges warrants, represents and agrees that in deciding to sign this Agreement:

1. That he has been advised to consult with an attorney before signing this Agreement;

2. That he has thoroughly and carefully discussed all aspects of his rights and obligations under this Agreement with his attorney or other legal or non-legal representative to the extent he wished to do so;

3. That he has had a reasonable and sufficient amount of time to carefully read, understand and consider all of the terms and provisions of this Agreement and whether to enter into this Agreement;

4. That he and/or his attorney have had an opportunity to participate in drafting this Agreement to the extent they wish to do so;

5. That he is voluntarily entering into this Agreement of his own free will and not under threat of force or duress by Tempe;

6. That he has relied upon his own judgment and that of any persons of his own choosing who have provided advice or counsel to him regarding this Agreement;

7. That he did not rely on and has not relied upon any representation or statement made by Tempe, or by any of Tempe's employees, officers, directors, or attorneys, other than those representations and/or statements expressly set forth herein, with regard to the subject matter, basis or effect of this Agreement, or for any other purpose; and

8. That this Agreement is written in a manner that is understandable to Ryff and that he has read, understood and agreed to all the provisions set forth in this Agreement.

IN WITNESS WHEREOF, the parties have set their hands the date first mentioned above.

CITY OF TEMPE, ARIZONA

By: _____
Andrew B. Ching, City Manager

APPROVED AS TO FORM:

_____
Judith R. Baumann, City Attorney
Tempe City Attorney's Office

_____
Tom Ryff
Police Chief

SUBSCRIBED AND SWORN to before me this 23rd day of June, 2015 by Tom Ryff.

Notary Public State of Arizona
Maricopa County
Erin Fillmore
My Commission Expires 07/08/2018

_____
Notary Public