

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS
BETWEEN THE CITY OF REVERE, OFFICER MARC BIRITTERI, AND REVERE
PATROL OFFICERS ASSOCIATION

The parties to this Settlement Agreement and Release of All Claims (hereafter, the “Agreement”) are The City of Revere (“the City”), Marc Birritteri, (“Birritteri”), and the Revere Patrol Officers Association, Massachusetts Coalition of Police (“the Union”).

Whereas, Birritteri has been a Police Officer in the City since approximately 2006; and

Whereas, Birritteri is a member of a bargaining unit represented by the Union; and

Whereas Birritteri was placed on paid administrative leave on April 9, 2021 and has not been at work as a police officer since that time; and

Whereas, Birritteri has made a request to be placed on injured-on-duty (IOD) status, pursuant to M.G.L. c. 41 Section 111F; and

Whereas, the City has denied Birritteri’s request; and

Whereas, the Union has filed a grievance on behalf of Birritteri seeking that he be placed on IOD status and to restore all the sick leave, vacation, and personal time Birritteri has utilized since April 9, 2021; and

Whereas, Birritteri has filed applications for Accidental Disability Retirement and Ordinary Disability Retirement with the Revere Board of Retirement pursuant to M.G.L. c. 32 Sections 6 & 7; and

Whereas, both applications for retirement noted above are pending before the Revere Board of Retirement.

Now, therefore, in consideration of the mutual covenants contained herein, and in the interests of resolution of this matter and harmonious relations going forward, the parties hereby agree to the following terms and conditions:

1. No later than fifteen (15) days from his execution of this Agreement:
 - a. The City shall place Birritteri on IOD status, with all associated pay and benefits pursuant to the Union’s Collective Bargaining Agreement with the City (“CBA”), retroactively with an effective date of April 9, 2021 and continuing through a decision of the Revere Retirement Board, described in Section 3, below. The City agrees not to seek to offset Birritteri’s IOD benefits in the event he receives wages for other employment during the time he is receiving IOD benefits.

- b. The City shall restore all the sick leave utilized by Birritteri since April 9, 2021, and Birritteri shall retain his rights to have the City buy back his accrued sick time upon his retirement or separation from employment with the City, pursuant to the CBA.
 - c. Upon his retirement from the Department, Birritteri shall retain his rights to vacation time buy back pursuant to the CBA.
 - d. Pursuant to M.G.L. c. 41, Section 100, the City agrees to pay all Birritteri's out-of-pocket PTSD treatment costs that were not already covered by health insurance. This does not include a return of Birritteri's employee contribution to his City-provided health insurance coverage.
 - e. The City agrees to pay or otherwise credit Birritteri with any and all stipends and allowances, pursuant to the CBA, including but not limited to hazard duty stipend, Quinn Bill stipend, night differential, clothing allowance, education incentives and holiday pay, which are regularly provided to bargaining unit members during IOD leave.
2. Birritteri agrees to maintain his applications for Accidental and Ordinary Disability Retirement and to pursue both applications with due diligence on his part to complete the application review process with the Revere Retirement Board. Birritteri agrees not to withdraw or otherwise cause to be dismissed either application prior to a final determination by the Revere Retirement Board. For its part, the City agrees to cooperate with Birritteri and not to contest or dispute, or to otherwise cause to be dismissed, either of Birritteri's applications for disability retirement.
3. If the Revere Retirement Board grants either Birritteri's Accidental Disability Retirement or Ordinary Disability Retirement applications, Birritteri's agrees that his employment as a Revere Police Officer shall end. At such time, he will assume the role of a retired police officer and receive any and all rights and privileges of that role under the CBA, including but not limited to retiree health insurance. If the Revere Retirement Board denies both the Accidental Disability Retirement and the Ordinary Disability Retirement applications, Birritteri agrees that his employment as a police officer in the City of Revere shall end permanently. At such time, he may submit a letter of resignation or retirement.
4. As further consideration for the promises herein, within 15 days of Birritteri's execution of this Agreement, the City agrees to pay him:
 - a. \$40,000.00 (forty thousand dollars), representing non-wage income reported on an IRS Form 1099 MISC; and

- b. \$25,000.00 (twenty-five thousand dollars) as reimbursement for attorney's fees, reported on an IRS Form 1099 MISC.
5. Without limiting the common law obligation not to disparage or defame, the City, the Mayor and/or any other elected and appointed officials, officers, agents, employees, insurers, attorneys, servants, or affiliates of the City, including but not limited to the Chief of Police, agree and represent that they will not make or publish any disparaging or derogatory statements about Birritteri. For his part, Birritteri agrees and represents that he will not make or publish any disparaging or derogatory statements about the City, the Mayor, Chief of Police, and/or any other elected and appointed officials, officers, agents, employees, insurers, attorneys, servants, or affiliates of the City.
6. Birritteri agrees and represents that if a court of competent jurisdiction determines that he breached a material term contained in this Agreement, or that he made any representations in this Agreement that are false, and which have caused harm to the City, the released parties shall be entitled to seek preliminary and other injunctive relief, as well as to recover damages. For its part, the City agrees and represents that if a court of competent jurisdiction determines that it has breached a material term contained in this Agreement, or that it made any representations in this Agreement that are false, and which have caused harm to Birritteri, he shall be entitled to seek preliminary and other injunctive relief, as well as to recover damages
7. Birritteri does hereby remise, release and forever discharge the City, and its elected and appointed officials, officers, agents, employees, insurers, attorneys, servants, affiliates, and their successors, and assigns, past and present, both in their individual and official capacities, from any and all manner of actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, settlements, damages, claims, charges, grievances, employment contracts (other than this document) or policies and demands whatsoever, known or unknown, at law or in equity, from the beginning of the world until the date he executes this Agreement, including but not limited to any claim under any and all state and federal laws, rules and regulations. Without limiting the generality of the foregoing, Birritteri's release of claims specifically includes, but is not limited to:
 - a. Claims for back pay, unpaid wages, or reinstatement to any position pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., or any other state or federal statute, or theory of contract including Massachusetts Civil Service law pursuant to M.G.L. c. 31; and
 - b. The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621, et seq. ("ADEA"); and

- c. Claims of intentional or negligent infliction of emotional distress, defamation, fraud, misrepresentation, interference with advantageous relations, violation of public policy, or breach of contractual or quasi-contractual rights; and
- d. Claims of discrimination or wrongdoing or retaliation under federal, state and local laws, regulations, and ordinances, based upon race, sex, age, national origin, ancestry, religion, marital status, veteran status, handicap, disability, or any other prohibited factor, including but not limited to all claims under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Americans with Disabilities Act of 1990, M.G.L. c. 151B, the ADEA and the Massachusetts Equal Rights Act.

Birritteri understands and agrees that, pursuant to the ADEA, he has twenty-one (21) days within which to consider the waiver of appeal rights under this Agreement prior to signing it. Birritteri understands further that, pursuant to the ADEA, once he has signed this Agreement, he has seven (7) days within which to revoke it and he understands that the Agreement does not become effective or enforceable until such seven-day revocation period has expired. While the agreement will be signed as of this date, Birritteri shall have the full twenty-one (21) days to consider, then seven days to revoke the Agreement. The parties agree that this release does not pertain to worker's compensation claims which, as a matter of law, may not be released.

- 8. Birritteri further represents and acknowledges that:
 - a. He has read this Agreement and understands its terms, their meaning, and their effect upon his rights and the duties hereby undertaken;
 - b. The consideration made hereunder by the City is in full and complete settlement and satisfaction of any amount(s) to which he may claim he is owed; and
 - c. He has been advised in writing to consult with an attorney and shall be afforded the opportunity to do so prior to executing this Agreement.
- 9. The City agrees to defend, indemnify and hold harmless Birritteri if he is a witness, party or threatened to be made a witness or party in connection with any litigation or claims brought against him and/or the City in connection with his employment with the City.
- 10. The Union agrees that it will take no action in derogation of the terms of this Agreement. Birritteri agrees that he has been fully and fairly represented by the Union in this matter. Furthermore, the Parties acknowledge that the Union executes this Agreement at the request of, and with the permission of its member, Birritteri.
- 11. This Agreement shall be without precedent and shall not be admissible in any forum except as necessary for its enforcement.

12. The parties hereto acknowledge that they enter into this Agreement with the advice and consent of counsel and that they do so knowingly and voluntarily, with complete understanding of the terms and the conditions of the Agreement

13. If any provision of this Agreement is found to be held invalid, illegal, or unenforceable the remainder of the Agreement will continue to be in full force and effect. This agreement will be governed by the laws of the Commonwealth of Massachusetts

Marc Birritteri, Patrol Officer, RPD

Brian Arrigo, Mayor

Marc Birritteri

Date: 10-5-21

Date: _____

For the Union

[Handwritten Signature]

APPROVED AS TO FORM:

Paul Capizzi, City Solicitor

Joseph Duca
RPOA President