

**LAST CHANCE AND RELEASE AGREEMENT  
BETWEEN THE CITY OF OAKLAND, THE OAKLAND POLICE OFFICERS'  
ASSOCIATION, AND MARK CASTILLO**

This Last Chance and Release Agreement ("Agreement") is entered into by and between the City of Oakland ("City"), the Oakland Police Officers Association ("Union" or "OPOA") and Mark Castillo ("Castillo"). The Oakland Police Department ("Department"), Chief of Police, City Administrator, City Councilmembers, and the Mayor are included within the "City." For purposes of this Agreement, the City, the Union and Castillo shall sometimes be referred to herein individually as the "Party" and collectively as the "Parties." The City has agreed to enter into this Agreement with Castillo in order to compromise, settle, and fully resolve any and all claims that Castillo may have or claim to have against the City related in any way to Internal Affairs Division ("IAD") Case No. 14-0037 ("14-0037") and (b)(4). (b)(4) The effective date of this Agreement shall be on the date of the signature of the last of the Parties to sign this Agreement ("Effective Date").

**RECITALS**

**WHEREAS**, Castillo is, and at all times relevant herein was, a City employee, working as a Police Officer in the Oakland Police Department; and

**WHEREAS**, the Department investigated a complaint involving Castillo and the findings and results of the investigation are included in IAD 14-0037; and

**WHEREAS**, as a result of the investigation, the Department sustained Castillo for violating Manual of Rules ("MOR") 370.27-1 [Use of Physical Force – Comparable to Level 4], MOR 314.39-2 [Performance of Duty – General], MOR 370.45-1 [Reports and Bookings], and MOR 398.80-1 [Truthfulness];

**WHEREAS**, on April 3, 2015, the City served Castillo with a Notice of Termination for the sustained violations described above; and

**WHEREAS**, the Parties have been in discussions regarding the proposed discipline and desire to compromise, settle, and fully resolve any and all claims that Castillo and/or the OPOA may have or claim to have against the City that arise out of or in any way relate to IAD 14-0037 (collectively "Claims").

**NOW, THEREFORE**, in consideration of the promises and mutual obligations of the Parties, the sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree with each other as follows:

**TERMS OF AGREEMENT**

1. The Recitals above are incorporated by reference as though fully set forth herein.

LAST CHANCE AND RELEASE AGREEMENT BETWEEN THE CITY OF OAKLAND,  
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2. Castillo understands that he is requesting one last chance to remain a City employee. Castillo understands that it is his sole responsibility to live up to the terms of this Agreement and that, upon failure to do so, the City will proceed immediately to terminate his employment.

3. Unless otherwise specified in the Agreement, the terms of this agreement shall expire two years from the date of its full execution.

4. In entering into this Agreement, Castillo and the OPOA agree to withdraw his grievance related to IAD 14-0037 with prejudice. Castillo recognizes and acknowledges that he violated MOR 370.27-1 [Use of Physical Force – Comparable to Level 4] and MOR 314.39-2 [Performance of Duty – General]. The Department agrees to change the “Sustained” findings of MOR 370.45-1 [Reports and Bookings] and MOR 398.80-1 [Truthfulness] to “Not Sustained” and reinstate Castillo to his position of police officer. The discipline imposed will be time served, which is calculated as a suspension equivalent to the number of days from the date of his termination April 3, 2015 through the Effective Date of this Agreement.

(b)(4)

6. Castillo agrees that should he incur a sustained IAD complaint of any of the rules listed in paragraph 7 on or before two years from the Effective Date of this Agreement, such sustained finding will result in his immediate, voluntary, and irrevocable termination of employment with OPD, unless the City decides otherwise. Castillo expressly agrees to waive any right to appeal the sustained finding beyond a *Skelly* hearing. Prior to the *Skelly* hearing, the Department will provide Castillo with all of the materials upon which the decision to sustain was based. Castillo understands that it will not be necessary for the City to prove “just cause” for his termination under the MOU with the OPOA, the City of Oakland’s Municipal Code, or the Civil Service Rules. If Castillo goes on approved leave from the Department, including but not limited to military or disability leave, the period shall be extended by the amount of time Castillo is on leave from the Department.

7. A sustained finding of any of the following MOR sections during the term of this agreement will trigger the disciplinary process described in paragraph 6 above:

- a) MOR 370.45-1 [Reports and Bookings];
- b) MOR 398.80-1 [Truthfulness]; or
- c) MOR 314.39-2 [Performance of Duty –General] limited to a sustained finding for failing to report a use of force.

LAST CHANCE AND RELEASE AGREEMENT BETWEEN THE CITY OF OAKLAND,  
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8. Nothing in this Agreement precludes the City from disciplining Castillo, up to and including termination of his employment, for any conduct that is not specified in Paragraph 7. Further, Castillo understands that his last chance status will be a substantial factor in deciding what level of discipline to impose during the term of this Agreement.

9. Except for the rights and obligations created by this Agreement, Castillo, on behalf of himself, his agents, representatives, attorneys, assignees, heirs, executors, administrators and successors in interest, hereby releases and forever discharges the City and all of its past, present and future Councils, agencies, divisions, and departments as well as each of their respective former, current and future directors, department heads, supervisors, managers, employees, attorneys, elected officials, Councilmembers, City Administrator, and any and all of them (all of the above collectively, the "City Released Parties"), to the extent permitted by law, from any and all liability, actions, causes of action, claims, charges, complaints, demands, grievances, obligations, losses, damages, injuries and legal responsibilities, of any type whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, which Castillo ever had or held, now has or holds or hereafter can, shall or may have or hold against the City Released Parties in any way related to IAD 14-0037 (b)(4) based on any claims or occurrences arising prior to the Effective Date of this Agreement (collectively, "Released Claims"). Released Claims defined in the immediately preceding sentence and released herein by Castillo as to the City Released Parties include, without limitation, all claims based upon, relating to or arising out of Castillo's employment with the City, and/or the termination of his employment, all claims in law, equity, contract and tort, and all claims under the California Fair Employment and Housing Act, the California Labor Code, the California Business and Professions Code, the Fair Labor Standards Act, the Equal Pay Act, National Labor Relations Act, Labor Management Relations Act, Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, as amended, Civil Rights Act of 1991, Americans with Disabilities Act, as amended, Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act of 1990, the Rehabilitation Act, Family and Medical Leave Act, California Family Rights Act, and/or all claims under any other federal, state, municipal or other governmental statute, regulation, ordinance or order. However, Castillo does not release claims which may arise pursuant to California Worker's Compensation Laws.

10. Castillo understands and expressly agrees that if he seeks and obtains a judicial determination that the release of his claims in this Agreement is void or unenforceable in any way by any of the City Released Parties and Castillo then asserts any claim or cause of action against any of the City Released Parties, this Agreement shall be of no force and effect and Castillo's employment immediately terminated.

11. Castillo and the OPOA understand and acknowledge that they cannot and will not file any claim, charge or lawsuit for the purpose of obtaining any relief except as stated above.

LAST CHANCE AND RELEASE AGREEMENT BETWEEN THE CITY OF OAKLAND,  
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12. Castillo specifically and expressly waives all rights under the provisions of Section 1542 of the Civil Code of California ("Section 1542 Waiver"). Section 1542 Waiver provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Thus, for the purposes of making a complete settlement of all claims which Castillo may have or claims to have against the City Released Parties, Castillo waives and releases any and all claims against the City Released Parties, including claims which are unknown and unsuspected as of the Effective Date of this Agreement. Castillo warrants that he has read this Agreement, including the Section 1542 Waiver, and has had an opportunity to consult with the Union and counsel of his own choosing about this Agreement and specifically about the Section 1542 Waiver, and that he understands this Agreement and the Section 1542 Waiver. Castillo acknowledges that he may later discover facts different from or in addition to those now known or believed to be true regarding the matters released or described in this Agreement, and even so he agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Castillo assumes any and all risk of any mistake in connection with the facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now unknown to him relating thereto.

13. Castillo acknowledges that he has not heretofore assigned or transferred to or purported to assign or transfer to any person or entity the Released Claims or any part or portion thereof, and agrees to indemnify and hold harmless the City Released Parties from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred whether or not litigation commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer thereof.

14. Each Party represents and warrants that, except as expressly set forth herein, no representations of any kind or character have been made to induce it or him to execute and enter into this Agreement.

15. Each Party represents and warrants that it or he: (a) had the opportunity to obtain legal advice from legal counsel of its or his choice before entering into this Agreement, (b) has read the contents of this Agreement; (c) fully understands the terms and consequences of this Agreement; (d) enters this Agreement voluntarily; and (e) shall not deny the validity of this Agreement on the grounds that it or he did not have advice of counsel or did not voluntarily and knowingly enter into this Agreement and agree to each of its terms.

LAST CHANCE AND RELEASE AGREEMENT BETWEEN THE CITY OF OAKLAND,  
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16. Nothing in this Agreement is intended to constitute an admission of any wrongdoing or any contractual violation by the City or its elected officials, agencies, departments, management staff, employees, agents, Council, Councilmembers, City Administrator or their successors or assigns.

17. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be commenced and maintained in California State Superior Court for the County of Alameda or in the United States District Court for the Northern District of California. The Parties expressly consent to jurisdiction and venue in the courts identified in this paragraph and waive any defenses to lack of jurisdiction or venue.

18. Except as otherwise provided for in this Agreement, each Party shall bear his or its own costs and attorneys' fees, if any, relating to the matters referenced herein, including any costs or fees incurred in reaching this settlement.

19. This Agreement shall be deemed prepared by all Parties and no contrary presumption, interpretation or construction shall arise in the event of any ambiguity or uncertainty thereof.

20. This Agreement may be executed in one or more counterparts, each of which shall constitute an original document, and all of which, when taken together, shall constitute a single document. Fax signatures and electronically transmitted signatures (for example: pdf files) shall constitute original signatures for the purpose of this Agreement.

21. 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.

22. Each person executing this Agreement warrants and represents that he/she has full authority to bind the corresponding Party to this Agreement.

23. The OPOA and Castillo understand and agree that if Castillo breaches this Agreement or if Castillo or the OPOA on his behalf files any claim or lawsuit against any of the City Released Parties seeking any relief which has been released herein, the release contained herein shall operate as a complete defense to such claims and all benefits provided herein shall cease and be revoked, and Castillo and all persons in privity with him, may be required to reimburse the City Released Parties for any damages and attorneys' fees and costs incurred by the City Released Parties.

24. This Agreement is entered into with the understanding that it does not establish a precedent, nor does it interpret any employee rights under the language of any labor agreement, or any applicable policies and procedures of the Police Department or City of Oakland and shall

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not constitute precedent in future cases. It shall not be referred to in any other case or matter involving any other employee. Nothing in this Agreement, however, would prohibit the City from referring to this Last Chance Agreement and the circumstances surrounding it in another case involving Castillo.

25. Each Party agrees to do all acts and things and to make, execute and deliver such written instruments, as shall be reasonably required to carry out the terms and provisions of this Agreement and agrees that time is of the essence.

26. No provision of this Agreement may be altered, modified or amended except by a subsequent writing signed by all Parties. The Parties agree that they will make no claim at any time that this Agreement has been orally altered or modified or otherwise changed by oral communications of any kind or character.

27. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes any and all prior understandings, representations, warranties and agreements between the Parties, whether oral or written, pertaining to the Released Claims and the subject matter of this Agreement. The Parties acknowledge that none of the Parties, their agents or their attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement, to induce the Parties to execute this Agreement, and acknowledge that the Parties have not executed this Agreement in reliance on any such promise, representation or warranty not contained herein. In entering into this Agreement, neither the OPOA nor Castillo has relied on any representation made by the City or its elected officials or any other representative or agent of the City.

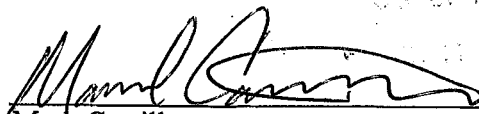
28. Castillo acknowledges that he has been advised to consult with the representative of his choice regarding this Agreement. Castillo further acknowledges that, when he reviewed this Agreement and/or consulted with the representative of his choice, he was not under the influence of any substance that altered or compromised his ability to understand the terms of this Agreement nor was he under the influence of alcohol. Castillo fully understands the terms and requirements of this Agreement and the consequences of his violation of any provision of this Agreement. Castillo has signed this Agreement freely, knowingly, and voluntarily with a full understanding of its terms.

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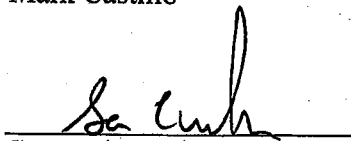
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29. Castillo understands that he is not entitled to any further last chance agreements at any point in his employment with the City. He understands that this is his LAST CHANCE.

Date: 12 Nov 2015

  
Mark Castillo

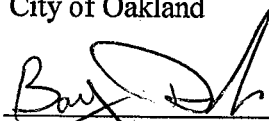
Date: 11-5-15

  
Sean Whent, Chief of Police  
City of Oakland

Date: \_\_\_\_\_

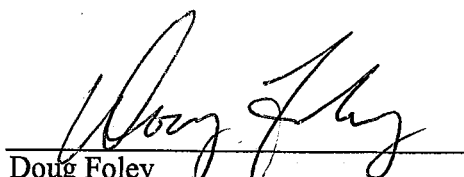
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Sabrina Landreth  
City Administrator  
City of Oakland

Date: 18 Nov '15

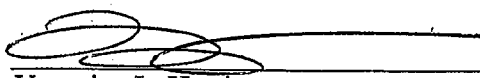
  
Representative  
Oakland Police Officer's Association

**APPROVED AS TO FORM:**

Date: 11/17/15

  
Doug Foley  
Rains Lucia Stern, PC  
Attorneys for Mark Castillo and the  
Oakland Police Officer's Association

Date: 11/10/2015

  
Veronica L. Harris  
Deputy City Attorney  
City of Oakland

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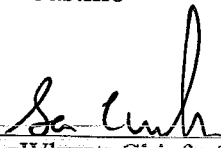


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Date: \_\_\_\_\_

\_\_\_\_\_  
Mark Castillo

Date: 11-5-15

  
\_\_\_\_\_  
Sean Whent, Chief of Police  
City of Oakland

Date: 11/16/15

  
\_\_\_\_\_  
Sabrina Landreth  
City Administrator  
City of Oakland

Date: \_\_\_\_\_


\_\_\_\_\_  
Representative  
Oakland Police Officer's Association

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Doug Foley  
Rains Lucia Stern, PC  
Attorneys for Mark Castillo and the  
Oakland Police Officer's Association

Date: 11/6/2015

  
\_\_\_\_\_  
Veronica L. Harris  
Deputy City Attorney  
City of Oakland

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