

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

IT IS HEREBY STIPULATED AND AGREED, by and between NICHOLAS A. FRANKS, on his own behalf and on behalf of his heirs, executors, administrators, successors and assigns (collectively referred to as "Mr. Franks"), the Township of Berkeley Heights, on its own behalf and on behalf of its predecessors, current and former affiliates, departments (including but not limited to the Department of Police), divisions, direct and indirect subsidiaries, officers, agents, employees, and representatives (collectively referred to as "the Township"), and PBA LOCAL 144, as follows:

WHEREAS, Mr. Franks was suspended without pay effective May 13, 2013, based on disciplinary charges set forth in a Preliminary Notice of Disciplinary Action dated and served upon on Mr. Franks on May 21, 2013 (the "May 21 PNDA"), Mr. Franks requested a hearing with regard to the disciplinary charges set forth in the May 21 PNDA, and requested that the Township postpone that hearing;

WHEREAS, Mr. Franks was served with a second Preliminary Notice of Disciplinary Action dated and served upon on him on July 18, 2013 (the "July 18 PNDA"), based on disciplinary charges set forth in the July 18 PNDA (the "Charges"), Mr. Franks requested a hearing with regard to the Charges, and requested that the Township postpone that hearing;

WHEREAS, the parties acknowledge that pending investigations may result in allegations that would serve as additional grounds to impose discipline upon Mr. Franks, up to and including termination of his employment as a Berkeley Heights Police Officer;

WHEREAS, the parties desire to effect the removal of Mr. Franks from his employment as a Berkeley Heights Police Officer, provide for prompt and orderly payment of sums due to Mr. Franks and otherwise to perform any and all of its obligations to Mr. Franks and moreover to provide reasonable assistance in carrying out such reasonable measures to assist in Mr. Franks' separation and related arrangements as he requests and authorizes (and the Township agrees to in this Agreement), resolve the currently outstanding charges against Mr. Franks, provide for the Township to terminate its obligations to, liabilities to and relationship with Mr. Franks to the fullest extent permitted by law;

WHEREAS, Mr. Franks and the Township desire to compromise, settle, and forever resolve and dispose of any and all differences and potential claims and controversies which Mr. Franks may have against the Township, up to and including the date of the execution of this Settlement Agreement and General Release ("Agreement") including but not limited to, any event relating to, arising out of, or in connection with his employment with, and/or separation of employment from, the Township; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the sufficiency of which is specifically acknowledged by the parties, the parties agree as follows:

1. Mr. Franks hereby withdraws his request for a hearing with regard to the Charges contained in the July 18 PNDA. Mr. Franks hereby irrevocably waives (a) his right to a hearing as to the Charges or their validity or sufficiency, and as to any resulting discipline, up to and including termination of his employment as a Berkeley Heights Police Officer, and (b) his right to contest the Charges and any resulting discipline, up to and including termination of his employment as a Berkeley Heights Police Officer, in the Superior Court of New Jersey or otherwise.

2. Mr. Franks hereby irrevocably waives his right to appeal the termination of his employment and removal as a police officer pursuant to N.J.S.A. 40A:14-150 or otherwise.

3. The Township hereby withdraws the May 21 PNDA and the charges and allegations contained therein, except to the extent that such charges and allegations are contained, subsumed or incorporated in the July 18 PNDA.

4. Without admitting the substance of the charges in the July 18 PNDA or any potential charges related to any pending investigations, Mr. Franks hereby acknowledges that the Township possesses sufficient competent evidence to sustain the Charges by a preponderance of the evidence as the basis for the termination of his employment as a Berkeley Heights Police Officer and that the Charges and facts underlying the Charges, if adjudicated in an administrative hearing, would constitute "just cause" for his removal from employment as a police officer and employee of the Township of Berkeley Heights. By withdrawing his request for a hearing as noted above, Mr. Franks understands and agrees that, by doing so, he knowingly and irrevocably waives his right to contest the Charges, the validity of the Charges, and the adequacy of the Charges as the basis for the termination of his employment as a Berkeley Heights Police Officer. However, this Agreement shall not be construed as an admission by Mr. Franks with respect to any criminal or quasi-criminal charges, allegations, or proceedings.

5. The employment of Mr. Franks by the Township of Berkeley Heights, Department of Police, shall be terminated effective September 27, 2013, based on the Charges.

6. Following the next regular payroll after the later of (a) September 27, 2013, or (b) the expiration of the revocation period referenced in Paragraph 21.e below, the Township shall pay Mr. Franks for accrued Compensatory Overtime, Compensatory Time and Vacation Time, less all applicable payroll deductions and withholdings. The gross amount of this payment, less all applicable payroll deductions and withholdings, shall be:

390.5 hours of Compensatory Time @ \$49.42 per hour:	\$19,298.51
89.5 hours Compensatory Overtime @ \$35.99 per hour:	\$3,221.11
48.0 hours of Vacation Time @ \$35.99 per hour:	<u>\$1,727.52</u>
Total	\$24,247.14

This payment shall be made by check mailed to Peter B. Paris, Esq. attorney for Mr. Franks, payable to "Mets Schiro & McGovern, LLP, Attorney Trust Account." This payment will be reported on an IRS Form W-2 to be issued to Mr. Franks in the normal course.

7. Mr. Franks and PBA Local 144 acknowledge and agree that the amount of Compensatory Time, Compensatory Overtime and Vacation Time listed in Paragraph 6 above accurately reflect the amount of such time accrued and owing to Mr. Franks, and that the amount paid for such time and the total amount paid is the amount due and owing to Mr. Franks upon termination of his employment by the Township and removal as a police officer.

8. Mr. Franks hereby directs and authorizes the Township to make the payment to him referenced in paragraph 6 above by check payable to "Mets Schiro & McGovern, LLP, Attorney Trust Account," and Mr. Paris hereby agrees to accept the referenced payment via check payable to his firm's trust account. Mr. Franks hereby releases, holds harmless and indemnifies the Township, the Township's elected and appointed officials, employees, agents and insurers from any and all claims and liability relating to the amount and manner of payment referenced in paragraph 6 above.

9. PBA Local 144 acknowledges and agrees that this Agreement resolves and extinguishes all grievances that were or could have been submitted pursuant to the collectively negotiated agreement between the Township and PBA Local 144 concerning or relating to Mr. Franks' disciplinary case(s), the termination of his employment as a Berkeley Heights Police Officer, and payments to or compensation of Mr. Franks, including but not limited to the payments referenced in paragraph 6 above.

10. Mr. Franks acknowledges that he has been advised to consult with an attorney prior to executing this agreement, and that he has in fact done so. He acknowledges that he has read this agreement and he fully understands and accepts the terms of this agreement. He also acknowledge that his signature is freely, voluntarily and knowingly given, having had the opportunity to obtain advice and assistance of legal counsel and having been provided a full opportunity and reasonable time to read, review and reflect on the terms of this agreement.

11. In consideration for the additional actions, benefits and accommodations described herein, including the Township's agreement to withdraw the May 21 PNDA, and except for the purposes of enforcing this Agreement, Mr. Franks waives, releases, and gives up any and all claims and rights, known or unknown, which he may have

against the Township, its affiliates, its respective predecessors, subsidiaries, divisions, departments (including the Department of Police), successors, and assigns, and its respective past and present elected and appointed officials, officers, directors, employees, consultants and contractors, benefit plans, plan administrators, benefit claim and appeal committees, agents, insurers and attorneys, and their heirs, executors, administrators, successors and assigns (together, "Released Parties"), based on any act, event, or omission, occurring before the execution of this Agreement or based upon any event relating to, arising out of, or in connection with Mr. Franks' employment with and/or separation of employment from the Township, including, but not limited to, discrimination and retaliation claims and any claim which could be asserted now, or in the future, under: the common law; any policies, practices, or procedures of the Township; any federal and/or state statute or regulations expressly including, but not limited to, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.; the New Jersey Conscientious Employee Protection Act; the Family Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq.; the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq.; the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 et seq.; the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; the Sarbanes-Oxley Act of 2002; any contract of employment, express or implied; any other theory of alleged wrongdoing by the Township, including, but not limited to, defamation; any provision of the Constitution of the United States, the State of New Jersey or any other state; and any provision of any other law, common or statutory, of the United States, of the State of New Jersey, or any other state. This Release is intended by the parties to be construed to release any and all claims and rights of Mr. Franks (whether known to her or not), including, but not limited to, any claims for attorneys' fees, arising on or before the date of the execution of this Agreement to the fullest extent permitted by law.

12. However, nothing in this Agreement is intended to preclude, prevent, or inhibit Mr. Franks from applying for State unemployment benefits, temporary disability benefits, or other benefits to which he may or may not be entitled, provided that any such application may not include a denial, express or implied, that the Township had sufficient and just cause to terminate him pursuant to the Charges. Nor does anything in this Agreement preclude, prevent, or inhibit Mr. Franks from seeking to withdraw his pension contributions or to apply for a disability pension provided that any such application may not include a denial, express or implied, that the Township had sufficient and just cause to terminate him pursuant to the Charges. The Township reserves all rights to contest any such applications, in its sole discretion, including the right to provide a copy of this Agreement to any third party to whom such an application is submitted by Mr. Franks, and Mr. Franks waives any monetary benefits or recovery of any kind whatsoever from the Township as set forth in this Agreement.

13. Mr. Franks waives any and all rights or claims he may have to reinstatement, employment, or re-employment with the Township, and agrees that the

Township shall be under no obligation whatsoever to consider him for employment or independent contractor work.

14. Mr. Franks acknowledges that pursuant to the Attorney General's Law Enforcement Drug Testing Policy, the Berkeley Heights Police Department is required to provide information relating to Mr. Franks' positive drug test results to the State of New Jersey's Central Drug Registry

15. The terms of this Agreement shall not be deemed to be or construed as an admission of liability, wrongdoing or a violation of any law, statute or regulation, any contract or agreement, or any other legal duty on the part of the Township, or by Mr. Franks, except to the extent set forth herein.

16. Nothing in this Agreement shall interfere with Mr. Franks' right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, or other federal or state regulatory or law enforcement agency. However, the consideration provided to Mr. Franks in this Agreement shall be the sole relief provided to Mr. Franks for the claims that are released herein by him and he will not be entitled to recover and agrees to waive any monetary benefits or recovery against the Township and the Released Parties in connection with any such claim, charge or proceeding without regard to who has brought such complaint or charge.

17. Mr. Franks represents that he has no lawsuits, arbitrations, charges, administrative proceedings, assertions, or other claims of any nature pending against the Township, in any state or federal court, or before any agency or other administrative body. It is understood and agreed that all such claims or proceedings, if any, will be withdrawn and not reinstated.

18. This Agreement constitutes the entire agreement by and among the parties, and may not be modified, altered or changed except upon the written consent of all parties hereto. This Agreement fully supersedes any and all prior agreements and understandings between Mr. Franks and the Township pertaining to the subject matter of the Agreement. Mr. Franks represents and acknowledges that he has not relied upon any representation, promise or statement by anyone, including the Township, its counsel or representatives, PBA Local 144, or his counsel, with regard to the subject matter of this Agreement, except as set forth in this Agreement.

19. This Agreement shall be governed by the laws of the State of New Jersey. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws. If any provision of this Agreement shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remainder of the Agreement. The parties agree that any action arising out of or in connection with this Agreement, including actions to interpret or enforce the provisions

of the Agreement, shall be brought only in a court of competent jurisdiction within the State of New Jersey, unless any alternative forum is agreed to in writing by the parties.

20. Mr. Franks, PBA Local 144 and the Township are bound by this Agreement. Anyone who succeeds to Mr. Franks' rights and responsibilities, such as his heirs or the executors of his estate, are also bound. This Agreement is made for the benefit of the Township and the Released parties, and all who succeed to their rights and responsibilities, such as any successors, assigns or heirs.

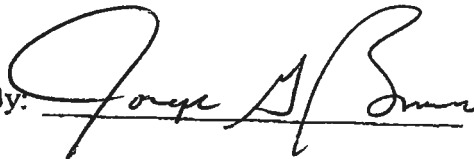
21. By signing this Agreement, Mr. Franks acknowledges and affirms the following:

- a. HE HAS READ THIS AGREEMENT AND UNDERSTANDS THAT HE IS GIVING UP IMPORTANT RIGHTS;
- b. HE CONSENTS TO EACH AND EVERY PROVISION IN THIS AGREEMENT AND HAS SIGNED IT KNOWINGLY AND VOLUNTARILY;
- c. HE HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE EXECUTING THIS AGREEMENT, AND, IN FACT, HAS DONE SO;
- d. HE ACKNOWLEDGES THAT HE HAS BEEN PROVIDED A REASONABLE PERIOD OF TIME TO STUDY AND CONSIDER THIS AGREEMENT WITH LEGAL COUNSEL BEFORE SIGNING IT; AND
- e. HE MAY REVOKE THIS AGREEMENT WITHIN SEVEN DAYS AFTER THE DATE HE SIGNS IT. HE ACKNOWLEDGES THAT THE AGREEMENT IS NOT BINDING OR ENFORCEABLE UNTIL THIS SEVEN-DAY PERIOD HAS EXPIRED. ANY SUCH REVOCATION MUST BE MADE IN A SIGNED LETTER EXECUTED BY MR. FRANKS AND RECEIVED BY CHIEF MICHAEL MATHIS OF THE BERKELEY HEIGHTS POLICE DEPARTMENT, NO LATER THAN 5:00 P.M. ON THE SEVENTH DAY AFTER MR. FRANKS EXECUTES THIS AGREEMENT. THE LETTER MUST BE DELIVERED TO BERKELEY HEIGHTS POLICE HEADQUARTERS, TO THE ATTENTION OF CHIEF MICHAEL MATHIS. MR. FRANKS EXPRESSLY UNDERSTANDS AND AGREES THAT, IF HE REVOKES THIS AGREEMENT, IT WILL NOT BE EFFECTIVE OR ENFORCEABLE AND HE WILL NOT BE ENTITLED TO ANY OF THE TOWNSHIP'S ADDITIONAL ACTIONS OR ACCOMODATIONS BENEFITS PROVIDED FOR IN THIS AGREEMENT.

TOWNSHIP OF BERKELEY  
HEIGHTS

  
\_\_\_\_\_  
NICHOLAS A. FRANKS

DATED: September 26, 2013

By:   
\_\_\_\_\_

DATED: September 10/25, 2013

PBA LOCAL 144

By: \_\_\_\_\_  
PAT MORAN, PBA Delegate

Dated: September , 2013

Mets Schiro & McGovern, LLP  
Attorneys for Nicholas Franks and  
PBA Local 144

  
BY: \_\_\_\_\_  
Peter B. Paris, Esq.

DATED: September 26, 2013

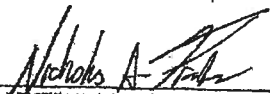
McElroy, Deutsch, Mulvaney &  
Carpenter, LLP  
Attorneys for the Township of  
Berkeley Heights

BY: \_\_\_\_\_  
Michael O'B. Boldt, Esq.

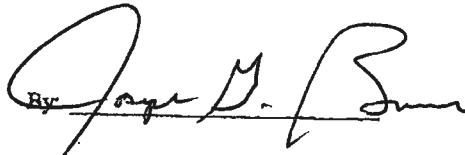
DATED: September , 2013



TOWNSHIP OF BERKELEY  
HEIGHTS

  
NICHOLAS A. FRANKS

DATED: September 26, 2013

By: 

DATED: September 10/21, 2013

PBA LOCAL 144

By:   
PAT MORAN, PBA Delegate

Dated: September 26, 2013

Metsuhiro & McGovern, LLP  
Attorneys for Nicholas Franks and  
PBA Local 144

BY:   
Peter B. Paris, Esq.

DATED: September 26, 2013

McElroy, Deutsch, Mulvaney &  
Carpenter, LLP  
Attorneys for the Township of  
Berkeley Heights

BY: \_\_\_\_\_  
Michael O'B. Boldt, Esq.

DATED: September , 2013

