

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (this "Agreement") is entered into as of _____, 2019, by and between City of Tempe (the "City") and the Ortega Law Firm, PC ("Law Firm").

RECITALS

The following recitals are true and correct and constitute an integral part of this Agreement.

A. This Agreement is being executed in connection with the City's partial response to the Law Firm's February 14, 2019 Public Records Request (the "PRR") related to an officer involved shooting that occurred on January 15, 2019 in the City of Tempe, Arizona (the "Event").

B. The parties understand that their relationship is one of mutual trust and confidence and that, through such discussions and other exchanges of information, the Law Firm may gain access to Confidential Information as defined below.

C. As a condition to providing responses to PRR to the Law Firm, the City requires that the Law Firm agree that the Law Firm and its Representatives, which are defined below, shall maintain all such Confidential Information in the strictest confidence as set forth below.

NOW THEREFORE, in consideration of Law Firm receiving information and records from the City and the mutual promises contained herein, the parties hereto agree to the following:

1. The term "Confidential Information" as used herein shall mean:
 - (i) all documents, reports, memoranda, notes, and other writings whatsoever prepared by the City and identified in Tempe Police Department General Offense Report # 19-6376 (the "Report") and produced by City in response to the PRR.
 - (ii) all Body Worn Camera recordings of Officer Joseph Jaen, Officer Anna Cano and Officer David Lewis identified as part of the Report and produced by City in response to PRR.
 - (iii) any and all 911 calls and/or CAD reports identified as related to the Report and produced by City in response to PRR.

2. "Representatives" includes the affiliates, officers, employees, agents, directors, independent contractors, and advisors of either party. This definition does not include the Law Firm's clients with respect to the Event or any other matter. The "Confidential Information" of the City specifically includes any discussions and exchanges of information with, and any information disclosed, prepared or provided by, any subsidiary or affiliate of the City.

3. "Confidential Information" shall not include any information to the extent that such information:
 - (i) is generally available to the public other than as a result of a disclosure by the Law Firm or its Representatives; and

(ii) was rightfully within the Law Firm's possession prior to its being furnished by the City to the Law Firm, as long as the source of such information was not bound by a confidentiality agreement with or other contractual, legal or other fiduciary obligation of confidentiality to Law Firm or any other party with respect to such information.

4. The term "Person(s)" as used in this Agreement shall be broadly interpreted to include the Law Firm's client, public, the media, and any corporation, company, partnership, limited liability company, group, individual, trust, estate, governmental official or body, or entity.

5. Unless otherwise required by law, the Law Firm agrees that the Confidential Information shall be retained by the Law Firm and its Representatives in strict confidence and shall not be disclosed by the Law Firm or its Representatives to any other Persons or entity without the prior written consent of the City. Except with the written consent of the City, neither Law Firm nor its Representatives shall disclose (a) the terms of this Agreement, (b) the fact that any discussions or exchange of information is taking place between the parties, (c) the substance of the Confidential Information, or (d) any of the records or tangible items produced by City to Law Firm.

6. Notwithstanding anything in this Agreement to the contrary, without the prior written consent of the City, the Law Firm and its Representatives shall not directly or indirectly disclose to any person: (a) any of the information contained with the Confidential Information; (b) that the Law Firm or its Representatives has requested or received any Confidential Information; or (c) any of the terms, conditions or other facts with respect to the Confidential Information, including the status thereof.

7. The Law Firm and its Representatives shall not use the Confidential Information for any purpose other than evaluating an alleged civil claim of liability against the City or any employees thereof. The Law Firm may disclose the Confidential Information only to its Representatives who need to know such information for the purpose of evaluating the alleged claim. The Law Firm shall not make or permit to be made any copies of any Confidential Information except for use by those Representatives permitted access to such information hereunder for the purpose of evaluating the alleged claim. The Law Firm agrees that each of its Representatives to which the Confidential Information is disclosed shall be apprised by the Law Firm of the existence and nature of this Agreement prior to such Representative receiving any Confidential Information and such Representative shall agree in writing to be bound by the terms and conditions of this Agreement. The Law Firm agrees that it will be liable for the breach of this Agreement by any of its Representatives.

8. If the Law Firm or its Representatives are required by law or requested to disclose any of the Confidential Information, the Law Firm shall:

(i) immediately notify the City of the existence, terms and circumstances surrounding such requirement or request;

(ii) provide the City the opportunity to take legally available steps to resist or narrow such requirement or request, or contest such law or request; and

(iii) if disclosure of such information is required by law, take reasonable steps, at the request and expense of the City, to attempt to obtain or help the City obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information that the City so designates within five (5) business days that Law Firm learns that such Confidential Information must be disclosed. In the event Law Firm is required by law to release Confidential Information, including by court order, subpoena or otherwise, Law Firm shall do so under seal by order of the court.

9. In the event that Law Firm does not file a Notice of Claim for alleged civil liability against the City and/or its employees, the Law Firm shall promptly return and deliver, and cause its Representatives to return and deliver, to the City all Confidential Information received in written and/or tangible form, including copies, reproductions or written materials containing Confidential Information. All documents, memoranda, notes and other writings whatsoever prepared by the Law Firm, or its Representatives, based on or that incorporate any of the information supplied by the City shall be destroyed and such destruction shall, upon the City's request, be certified in writing to the City by an officer of the Law Firm. Law Firm acknowledges that Law Firm's return or destruction of the Confidential Information, Law Firm shall remain bound by the terms of this Agreement.

10. The Law Firm and City agree that this Agreement shall remain in full force and effect unless the Law Firm and the City agree in writing that the Agreement has been terminated.

11. Anything in this Agreement to the contrary notwithstanding, Law Firm shall indemnify and hold the City fully harmless against any loss, damages, claims, penalties, or expenses of any kind whatsoever (including costs and reasonable attorneys' fees), sustained or incurred by the City as a result of a breach of this Agreement by Law Firm or its Representatives. Each party recognizes that any actual or threatened disclosure of Confidential Information in violation of this Agreement may cause the City to suffer irreparable harm and that City shall be entitled, in addition to all other remedies rights and remedies available at law and in equity, to injunctive relief or a decree of specific performance without the necessity of demonstrating actual monetary damage.

12. Law Firm understands and agrees that failure to comply with sections 5, 6, 7 and/or 8 of this Agreement will result in damage to the City, and that is and will be impracticable to determine the actual amount of such damage in the event of a breach. Therefore, the parties hereby agree to liquidated damages in the amount of one-million dollars (\$1,000,000) for any breach of the provisions in sections 5, 6, 7 and/or 8 of this Agreement.

13. The Law Firm may not assign or transfer this Agreement or any rights hereunder to any third party without the prior written consent of City.

14. This Agreement shall be governed by the laws of the State of Arizona excluding its body of law controlling conflicts of laws. The parties irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts having within their jurisdiction Maricopa County, State of Arizona, and agree to waive all objections and defenses regarding personal jurisdiction, venue and forum non conveniens (excepting any actions seeking to enforce any order or judgment of such federal or state courts located in Maricopa County, State of Arizona). The

prevailing party in any action to enforce this Agreement shall be entitled to costs and fees (including attorneys' fees and expert witness fees) incurred in connection with such action.

15. This Agreement shall not be modified, amended or waived, except in a writing signed by all parties hereto. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which, so far as possible, achieves the parties' intent in agreeing to the original provision, and the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed by the parties hereto in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Confidentiality and Non-Disclosure Agreement as of the date set forth above.

City of Tempe

By: _____
Name: _____
Title: _____

Ortega Law Firm PC

By: _____
Name: _____
Title: _____