

**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

This Release of All Claims is entered into between Plaintiff David Eckert (“Eckert”) and Defendants City of Deming, its officers Bobby Orosco and Robert Chavez (“City of Deming Defendants”), Hidalgo County and its deputies David Arredondo, Patrick Green and Robert Rodriguez (“Hidalgo County Defendants”) all of whom may also be referred to collectively as “the Parties.”

**RECITALS**

WHEREAS, Eckert filed the underlying lawsuit against the City of Deming Defendants and Hidalgo County Defendants on August 7, 2013 in the U.S. District Court for the District of New Mexico in Cause No. 13-CV-00727 JB/WPL; and

WHEREAS, the underlying suit arises out of incidents which occurred on or about September 6, 2012 and January 2–3, 2013; and

WHEREAS, the Parties agree to settle the underlying lawsuit without admitting or conceding liability as to any matter at issue;

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND IN CONSIDERATION OF THE COVENANTS CONTAINED HEREIN, THE PARTIES AGREE TO THE FOLLOWING:

**UNDERLYING SETTLEMENT TERMS**

1. In consideration for payment described herein in paragraph 6, Eckert dismisses, waives, releases and discharges the City of Deming Defendants and the Hidalgo County Defendants, their councillors, current and former commissioners, directors, departments, attorneys, representatives, predecessors, insurers, successors, assigns, employees and agents from all manners of liabilities, claims, demands, and causes of action, known or unknown, fixed

or contingent, arising in the past, present, or future which Eckert or anyone claiming through Eckert may personally have or claim to have against the City of Deming Defendants and Hidalgo County Defendants as a result of the incidents which occurred on September 6, 2012 and January 2-3, 2013 with prejudice. This Agreement includes all demands, obligations, actions, claims, damages, costs, or rights Eckert, his agents, successors, and assigns now have or may have that could be related to the incidents occurring on or about the aforementioned dates. This shall be a fully binding and complete settlement between the Parties, and each party's agents, successors and assigns. Other than as stated in paragraph 2 this settlement agreement is not meant or intended to release any other defendant or any other defendant's employees in the referenced case.

2. Also, in consideration for the payment described in paragraph 6, Eckert acknowledges and agrees to dismiss with prejudice all 42 U.S.C. Section 1983 claims against Defendant Robert Wilcox, M.D. and Okay H. Odocha M.D.

3. Eckert understands that this is a general release encompassing all of Eckert's claims arising under federal, state, or local law, including but not limited to claims arising under state and federal statutes, as well as any claims arising under any theory of common law. Claims released are those of which Eckert is presently aware, and those of which he may be unaware, for violations of civil rights, personal injury, bodily injury, property damage or otherwise. This general release is binding upon the successors, heirs, executors, and administrators of Eckert.

4. In consideration for the payments described in paragraph 6, Eckert and only Eckert is responsible for any reimbursement or subrogation to his insurance company/companies, related to the incidents of September 6, 2012 and January 2, 2013. The amounts being paid on account of physical injury pursuant to Section 104(a)(2) of the Internal Revenue Code. If any

government agency determines that taxes are owed as a result of the settlement, Eckert shall be exclusively liable for the payments of all federal, state and local taxes, if any, which may be due as a result of the consideration paid as set forth in this agreement. Eckert agrees to indemnify the City of Deming Defendants and Hidalgo County Defendants from the payment of taxes, including interest and penalties thereon, which may be required of him by any government agency at the time as a result of the payment and consideration provided for herein.

5. It is expressly understood and agreed that the payment of the sum described in the below paragraphs, and the additional consideration designated below, is not and shall not be construed as an admission of liability by the City of Deming Defendants or Hidalgo County Defendants. Eckert is settling and compromising disputed claims as to which the released Parties expressly deny any liability. As a consideration and inducement for this compromise and settlement, Eckert agrees that neither he nor his attorney nor his authorized representatives or agents shall cause to be made public or release to any news medium or disclose to any person or entity, the settlement amount or any of the details of this Agreement to the extent permitted by law. Eckert recognizes that confidentiality is a provision of, and is consideration for, the Parties' settlement agreement. If a request is made for records relating to this settlement, the Parties agree that the City of Deming Defendants and Hidalgo County Defendants will have sole discretion to determine what may be released pursuant to law. The City of Deming Defendants and the Hidalgo County Defendants agree that they will notify Eckert, through his attorneys, of any decision to release the settlement amount or the settlement agreement contemporaneously with its release. The decision to release the settlement amount or the settlement release shall release Eckert and his attorneys from any duty to refrain from commenting on the release or the amount of the settlement. Additionally, Eckert states that confidentiality of the amount of

settlement was requested by him as well for his own privacy and states that he does not believe that any additional compensation was paid to him for any confidentiality agreement. Rather, Eckert has requested that the parties maintain confidentiality of the settlement agreement. Eckert represents that he believes that the attorneys for the other defendants present at the settlement conference held on December 13, 2013 in Las Cruces N.M. are aware of the settlement amount.

#### **PAYMENT**

6. Pursuant to this Agreement, the City of Deming Defendants and Hidalgo County Defendants agree to pay Eckert in settlement of the above lawsuit, the combined sum of ONE MILLION SIX HUNDRED THOUSAND DOLLARS AND 00/100 (\$1,600,000.00) as follows:

- a. SIX HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$650,000.00) from the Hidalgo County Defendants; and
- b. NINE HUNDRED AND FIFTY THOUSAND DOLLARS AND 00/100 (\$950,000.00) from the City of Deming Defendants.

#### **SUPPLEMENTAL DOCUMENTS**

7. All Parties agree to cooperate fully, execute any and all supplementary documents, and take all additional actions that may be necessary to give full force and effect to this Agreement. The Parties agree to dismiss the individually named City of Deming Defendants and Hidalgo County Defendants prior to filing of a motion to dismiss the City of Deming and Hidalgo County. Specifically, Defendants Bobby Orosco, Robert Chavez, David Arredondo, Patrick Green and Robert Rodriguez will be dismissed, with prejudice from the underlying lawsuit. Eckert will also dismiss his 42 U.S.C. Section 1983 claims (Counts IX and X) against

Defendants Robert Wilcox, M.D. and Okay H. Odocha, M.D. with prejudice. Copies of the joint motions and orders of dismissal are attached as **Exhibits 1, 2 and 3**.

### **FEES**

8. Each Party shall bear its own costs and fees, including attorneys' fees associated with the underlying lawsuit.

### **ADVICE OF COUNSEL**

9. Eckert acknowledges that he is represented by counsel and has read and understands the effects of this Agreement. Eckert further states he executes this Agreement of his own free will and accord, for the purpose and consideration set forth in this Agreement.

### **INTEGRATION**

10. This Agreement contains the entire understanding between the Parties hereto concerning the subject matter contained herein.

11. All Parties agree that each paragraph and component of this Agreement is a material term and that failure to comply with any of the provisions contained herein constitutes a material breach of this Agreement.

12. Eckert represents and warrants that there have been no representations or promises made by the City of Deming Defendants or Hidalgo County Defendants on which he relied in connection with the Agreement, other than what is set forth herein in writing.

13. Eckert further represents and warrants that he is not being induced to enter into this Agreement by anything other than the written words contained in this Agreement.

14. This Agreement constitutes the entire Agreement and understanding between the Parties and shall not be modified or altered, except in writing, and signed by all Parties.

15. This Settlement and Release of All Claims shall be effective following execution by Eckert. Facsimile signatures shall be acceptable as original for all purposes.

David Eckert 1-2-14  
DAVID ECKERT DATE

STATE OF NEW MEXICO )  
 ) SS.  
COUNTY OF Hidalgo )

SUBSCRIBED AND SWORN TO before me on this 2<sup>nd</sup> day of January 2014  
by DAVID ECKERT.

Deborah A. Greene  
Notary Public

My Commission Expires:  
10/29/2016

