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March 28, 2023

**VIA HAND DELIVERY TO:**

Mayor B. H. "Skip" Henderson III  
Office of the Mayor  
6th Floor, Government Center Tower  
Columbus, Georgia 31901

***Re: Freddie Blackmon Severance Proposal***

Dear Mayor Henderson,

This firm represents Chief Freddie Blackmon, who is currently employed by the City of Columbus (the "City") as its Chief of Police. Chief Blackmon was recently informed of the City's intention to terminate his employment effective April 5, 2023, under the terms of a proposed Severance and Release Agreement.

The facts and circumstances surrounding this matter make it clear that the City has discriminated against Chief Blackmon on the basis of his race (Black) in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), 42 U.S.C. § 1981 ("Section 1981") pursuant to 42 U.S.C. § 1983, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983. The purpose of this correspondence is to briefly set forth the facts and circumstances underlying Chief Blackmon's claims and the terms under which he will agree to release them short of legal action.

**FACTUAL BACKGROUND**

Chief Blackmon, who is Black, has been the Chief of Police for the City of Columbus, Georgia since November 17, 2020, having honorably served the City in various law enforcement roles since 1986. At the time that Chief Blackmon was recommended to become the Chief of Police by you, Mayor Skip Henderson, he enjoyed the unanimous support of the City Council, including Judy Thomas, Bruce Huff, Walker Garrett, Glenn Davis, Gary Allen, Evelyn "Mimi" Woodson, Toyia Tucker, Charmaine Crabb, Jerry "Pops" Barnes, and John House.

In the summer of 2021, two white Lieutenants of the Columbus Police Department, Ralph Downe and Tony Allen Litle, filed Charges of Discrimination with the Equal Employment Opportunity Commission, alleging discrimination on the basis of their race. Interestingly, both

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had been repeatedly rejected for promotion by the former Police Chief, Ricky Boren, but neither made discrimination claims then. In March 2022, Lieutenants Dowe and Litle filed a civil rights lawsuit against the City, which is currently being litigated in federal court. You, Mayor Henderson, Chief Blackmon, and Human Resources Director Reather Hollowell were also named as individual defendants in the action. Notably, Lieutenant Dowe is the President of the Columbus Chapter of the Fraternal Order of Police (“FOP”). The City of Columbus is providing a defense to this case, deeming it meritless.

In July 2022, a third party consultant, Jensen Hughes, began conducting an Operational Assessment of the Police Department. The final report was presented to the City Council on February 14, 2023. The Report’s critical assessment relied heavily upon the findings of a 2022 survey conducted by the FOP. As should have been immediately apparent to Jensen Hughes and the City Council, the survey was inherently biased due to the influence of Lieutenant Dowe, the FOP President who is currently suing the City and Chief Blackmon. In addition, white constituents (and supporters of Lieutenant Dowe) bombarded the City Council with calls demanding Chief Blackmon’s termination.

Rather than reject the Jensen Hughes report due to its fundamental unreliability, certain members of the City Council used the report as a pretextual basis to terminate Chief Blackmon based upon his race in order to placate Lieutenant Dowe. On March 14, 2023, Chief Blackmon presented a strategic plan of his own to the City Council in response to the Jensen Hughes recommendations. You, Mayor Henderson, City Manager Isaiah Hugley, and City Council Members Bruce Huff, and Jerry “Pops” Barnes expressed appreciation for Chief Blackmon’s strategic plan. No City Council members expressed disapproval. Chief Blackmon was understandably shocked the very next day when he was notified that a majority of the City Council was prepared to vote to terminate his employment. Tellingly, the vote to terminate Chief Blackmon appears to be along racial lines, with six white Council members supporting his termination.

Then, when the City presented Chief Blackmon with its Severance and Release Agreement, it subjected him to disparate treatment compared to his recently-departed predecessor, Chief Ricky Boren, who is white, by depriving Chief Blackmon of valuable retirement benefits through the City’s Deferred Retirement Option Plan (DROP) that he had counted on to support himself in retirement at the end of his law enforcement career.

### LEGAL CLAIMS

Based on the facts outlined above, Chief Blackmon can establish a *prima facie* case of race discrimination under Title VII and Section 1981<sup>1</sup> because he can show that (1) he is a member of a protected class; (2) he was qualified for his position; (3) he suffered an adverse employment action; and (4) he was treated less favorably than similarly-situated individuals outside his protected class. *Lewis v. City of Union City, Georgia*, 918 F.3d 1213 (11th Cir. 2019) (holding that a comparator need only be “similarly situated in all material respects.”); *Clark v. Coats & Clark*,

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<sup>1</sup> Claims under Section 1981 are analyzed under the same analytical framework as Title VII. See *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998).

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990 F.2d 1217, 1227 (11th Cir. 1993) (inferring job qualifications from years of experience). Phrased differently, it is evident based upon the facts at issue here that “but for” Chief Blackmon’s race he would not have been terminated. *Bostock v. Clayton Cty., Ga.*, 140 S. Ct. 1731, 1739 (2020) (“[s]o long as the plaintiff’s [protected trait] was one but-for cause of that decision, that is enough to trigger [Title VII.]”); *see also Comcast Corp. v. Nat’l Ass’n of African Am.-Owned Media*, 140 S. Ct. 1009, 1019 (2020) (“but-for” causation in the context of Section 1981). Further, in subjecting Chief Blackmon to discrimination based upon his race, the City has deprived Chief Blackmon of his right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983.

Notably, although Chief Blackmon has strong evidence that the City’s proffered reasons for its adverse actions are pretextual, he does not need to show pretext to survive summary judgment on his claims for race discrimination under Title VII if this matter is litigated. *See Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1237-40 (11th Cir. 2016) (abandoning the requirement of pretext for discrimination claims under Title VII because it is “fatally inconsistent” with the mixed-motive theory of discrimination which the discrimination provision of 42 U.S.C. § 2000e-2(m) contemplates). Rather, he need only show that (1) the City took an adverse employment action against him and (2) his race was “a motivating factor” in the decision to do so. *Id.* at 1239 (emphasis in original). It should also be noted that Chief Blackmon is not required to prove his case within the rigid construct of the *McDonnell Douglas* shifting-burden test, because the facts above demonstrate a “convincing mosaic of circumstantial evidence,” that would allow a jury to infer intentional race discrimination. *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011).

In terminating Chief Blackmon’s employment for pretextual reasons because of his race the City has clearly violated federal law. While Chief Blackmon has suffered a complete disruption of his life as a result of the City’s unlawful conduct, along with potentially significant financial loss, and he is prepared to pursue his claims, we believe a prompt settlement of this matter is in the best interest of both parties. Under both Title VII and Section 1981, Chief Blackmon is entitled to recover his lost wages, compensatory damages, and an award of his attorneys’ fees and costs of litigation in the event he prevails on the merits of his claims against the City. In cases involving a public employer, a court may award front pay for the entire remainder of a plaintiff’s career. *See e.g., Warren v. Cnty. Comm’n of Lawrence Cnty., Ala.*, 826 F. Supp. 2d 1299, 1313-18 (N.D. Ala. 2011) (court awarded 33-year-old plaintiff 32 years of front pay, considering that employees who worked for the defendant county tended to stay employed until retirement). Significantly, under Section 1981 and the Equal Protection Clause of the United States Constitution, the compensatory damages which Chief Blackmon could be awarded at trial are uncapped, which creates considerable exposure for the City given the facts at issue here.

The City has offered Chief Blackmon a severance package which does not reflect the significant value that he added to the law enforcement community and his exemplary service to the public during his decades of tenure or the nature of the circumstances which led to the termination of his employment. Nor does it compensate him for the considerable loss he will suffer in retirement benefits under DROP. To that end, we are authorized to convey that Chief Blackmon will agree to release all of his claims against the City in exchange for the following:

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- **\$646,053.20** representing five years of Chief Blackmon's base salary through age 62, when he intended to retire;
- **\$200,000**, representing compensatory damages under Title VII, Section 1981 and the Equal Protection Clause;
- A continuation of Chief Blackmon's health insurance benefits through May 31, 2030;
- A separate payment for all vacation/overtime pay accrued as of the date of Chief Blackmon's separation of employment;
- Eligibility to participate in the Columbus Consolidated Government Pension plan;
- Eligibility and full vestment in the City's Deferred Retirement Option Plan (DROP) as if he had retired on or about October 31, 2027, at age 62; and
- Attorney's fees of **\$15,000**.

*This settlement proposal will remain open for fourteen (14) days from the date of this letter.*

### DOCUMENT PRESERVATION REQUEST

Due to the potential of an investigation by the EEOC and future litigation with respect to this matter, The City is directed to preserve and place a litigation hold on all documents (including, but not limited to, hardcopy documents, emails, and electronically stored information) that concern Chief Blackmon; and complaints of any form of race discrimination involving an employee of the City in the last ten (10) years.

If you have any questions regarding the above, please contact us directly. We look forward to your timely response.

Sincerely,



Edward D. Buckley



Ashley Wilson Clark

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Cc: Clifton C. Fay  
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