

This Confidential Settlement Agreement and General Release (the "Agreement") is made and entered into between \_\_\_\_\_ ("\_\_\_\_") and the Town of Chester, New Hampshire, including all other divisions, departments and related entities, elected officials, and employees (collectively "Chester").

WHEREAS, \_\_\_\_\_ brought an action against Chester captioned \_\_\_\_\_, Town of Chester, New Hampshire; Town of Eliot, Maine, Dana Lee, Town of Eliot, Maine; and Jane Doe, Representative of Town of Chester Board of Selectman, which is currently pending in the United States District Court for the District of Maine, Docket No. 2:19-cv-00497-JAW (hereinafter the "Litigation"); and

WHEREAS, the Parties desire to compromise, settle, buy complete peace from, and terminate any and all known and unknown disputes, claims, controversies, demands, actions, causes of action, and litigation as exist between them arising from or in any way related to \_\_\_\_\_ employment, separation from employment with the Town, and/or the 2005 Settlement Agreement and General Release and Waiver ("2005 Settlement Agreement"), and any damages, costs, expenses, and/or injuries that she sustained or may sustain as a result thereof, and in order to avoid the nuisance, time, and expense of further litigation.

NOW, THEREFORE, in consideration of the recitals stated above, which are hereby incorporated into this Agreement and made a part hereof, and in consideration of the mutual promises, covenants, agreements, representations and warranties contained herein, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the parties as follows:

1. Consideration. Primex<sup>3</sup> shall pay to \_\_\_\_\_ the sum of Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00) allocated as follows:

a. Lost Pay. A payroll check made payable pursuant to settlement to \_\_\_\_\_ in the gross amount of Five Thousand Six Hundred and Twenty Five and 00/100 Dollars (\$5,625.00), less applicable employee payroll taxes and deductions, for which a Form W-2 will be issued to \_\_\_\_\_ and

b. Alleged Compensatory Damages. A check made payable to \_\_\_\_\_ in the amount of Five Thousand Six Hundred and Twenty Five and 00/100 Dollars (\$5,625.00), as alleged compensatory damages, for which a 1099 Form will be issued to \_\_\_\_\_ and

c. Attorneys' Fees and Costs. A check payable to "Maine Employee Rights Group" in the amount of Eleven Thousand Two Hundred and Fifty and 00/100 Dollars (\$11,250.00), as attorneys' fees and costs, for which separate 1099 Forms will be issued to \_\_\_\_\_ and to the law firm.

Payment will be made within thirty (30) days of the Effective Date of this Agreement as set forth

in Paragraph 10 below.

2. General Release by \_\_\_\_\_ In consideration of the payment to be made described in Paragraph 1 herein and the mutual promises, covenants, agreements, and representations contained herein, \_\_\_\_\_ on behalf of herself, her heirs, representatives, and assigns, fully releases the Town of Chester, including but not limited to their predecessors, successors, parent and sister organizations, subsidiaries, divisions, departments, affiliated entities, and their current and former partners, officers, directors, trustees, administrators, fiduciaries, employment benefit plans and/or pension plans or funds, executors, attorneys, employees, insurers, reinsurers and/or agents and their successors and assigns individually and in their official capacities, (collectively referred to herein as "Released Parties") from all known and unknown claims, causes of action, suits, litigation, demands, and obligations of every kind, including claims for damages, wages, attorneys' fees and any other form of relief available at law or in equity, which she has or may have by means of any matter, cause, or thing whatsoever from the beginning of time to the execution date of this Agreement. Without limiting the generality of the foregoing, this release includes all matters arising out of or in connection with \_\_\_\_\_ employment and/or separation from employment and the 2005 Settlement Agreement with Chester from the beginning of time to the execution date of this Agreement, including but not limited to any claims of discrimination; failure to accommodate; harassment; wrongful termination; constructive discharge; retaliation; defamation; breach of privacy; breach of implied contract; negligence; any rights or claims alleging failure to pay wages pursuant to New Hampshire RSA 275 *et seq.* and/or any federal wage statutes; intentional infliction of emotional distress; negligent infliction of emotional distress; violation of procedural and substantive due process rights; negligent supervision or retention; assault; battery; conspiracy; unfair labor practices; violation of the Whistleblowers' Protection Act, NH RSA 275-E, *et seq.*; New Hampshire Law Against Discrimination, NH RSA 354-A, *et seq.*; New Hampshire Equal Pay Law, NH RSA 275:36, *et seq.*; New Hampshire Wage Payment and Work Hour laws; New Hampshire Worker's Compensation Laws, NH RSA 281-A, *et seq.*; the Family and Medical Leave Act of 1993, as amended; the Americans with Disabilities Act of 1990, as amended; the National Labor Relations Act, as amended; Title VII of the Civil Rights Act of 1964, as amended; U.S.C. Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Employee Retirement Income Security Act of 1974, as amended (except for any vested benefits under any tax qualified benefit plan); the Immigration Reform Control Act, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Fair Credit Reporting Act; the Fair Labor Standards Act, as amended; the Occupational Safety and Health Act, as amended; the Equal Pay Act; the Genetic Information Nondiscrimination Act of 2008; the Whistleblower's Protection Act, 42 U.S.C. §1983; and any and all claims that may be asserted under state or federal statute or common law.

Without limiting the generality of the foregoing, \_\_\_\_\_, expressly releases and waives any and all claims set forth or which could have been set forth in the Litigation. This shall be a full and final release of all claims known and unknown, foreseen and unforeseen, which have accrued to \_\_\_\_\_ against Chester and individual employees up to and including the date of her execution of this Agreement, regardless of the adequacy of the compensation or the extent or character of her injuries and/or damages, known or unknown,

and is intended to buy peace from any such claims and assumes all risk, chance, or hazard that any injuries and/or damages may become permanent, progressing, greater, or more extensive than is known, anticipated, or expected. \_\_\_\_\_ expressly acknowledges

3. Termination of Litigation. As a condition for payment of the consideration described in Paragraph 1 (Consideration) above, \_\_\_\_\_ will file a joint Stipulation of Dismissal, With Prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) or, if the other Defendants in the Litigation do not agree to the stipulation, a motion for dismissal, pursuant to Fed. R. Civ. P. 41(a)(2), upon payment of the consideration to \_\_\_\_\_ and her counsel. \_\_\_\_\_ also agrees to otherwise cooperate fully in terminating with prejudice the pending CIVIL action identified above.

4. Indemnity with Respect to Tax Treatment. Should the characterization of the payment set forth in Paragraph 1 be found to be improper or unwarranted by the Internal Revenue Service or other taxing authority with the result that Chester is held obligated to pay taxes, additional taxes, penalties, or interest which should have been deducted from the gross amount of such payments, or if the Internal Revenue Service or other taxing authority otherwise finds the payment to be taxable or subject to tax, \_\_\_\_\_ agrees to fully indemnify Chester for all employee portions of such taxes, penalties, or interest actually paid by it; and further agrees that she will not assert, file, or make any claims against Chester for any portions of such taxes, penalties, or interest she may be compelled to pay and the costs, including attorneys' fees, which she may have to pay in connection with any disputes between herself and the Internal Revenue Service or other taxing authority.

5. Medicare Status. In entering into this Agreement, the parties have fully considered Medicare's potential interests pursuant to the Medicare Secondary Payer ("MSP") statute (42 U.S.C. § 1395y(b)). \_\_\_\_\_ affirms that as of the date she signs this Agreement, she is not enrolled in the Medicare program (i.e., is not 65 years of age or older; is not suffering from end stage renal failure; has not received Social Security Disability Insurance benefits for 24 months or longer, etc.), was not enrolled in the Medicare program at the time of her employment with Chester or at any time thereafter to through the date of her execution of this Agreement. \_\_\_\_\_ further affirms that she has not received Medicare benefits for medical services or items related to, arising from, or in connection with her employment with Chester. This affirmation is a material term of this Agreement and without which Released Parties would not have agreed to enter into this Agreement. Based on these representations made by \_\_\_\_\_ the parties have determined that Medicare has no interest in any payments made under this Agreement and no reporting is required to Medicare.

To the extent \_\_\_\_\_ representations and warranties related to her Medicare status and receipt of medical services and items related to incidents during her employment with Chester are inaccurate, not current, or misleading, \_\_\_\_\_ agrees to indemnify and hold harmless Released Parties from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising from or related to this Agreement, the payment of the settlement,

any "Conditional Payments" (as defined by the MSP Statute and implementing regulations) made by Medicare, or any medical expenses or payments arising from or related to her employment that is subject to this Agreement or the release set forth herein, including but not limited to: (a) all claims and demands for reimbursement of Conditional Payments or for damages or double damages based upon any failure to reimburse Medicare for Conditional Payments; (b) all claims and demands for penalties based upon any failure to report, late reporting, or other noncompliance with or violation of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("the MMSEA") that is based in whole or in part upon late, inaccurate, or inadequate information provided to the Released Parties by \_\_\_\_\_ or upon any failure of \_\_\_\_\_ and (c) all Medicaid liens. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of the Released Parties in connection with such claims, demands, subrogated interests, or causes of action.

\_\_\_\_\_ confirms that any information provided by her for confirmation of her Medicare status, including her name, gender, date of birth, and social security number, is complete, accurate and current as of the date of this Agreement.

\_\_\_\_\_ further represents and warrants that no Medicaid payments have been made to or on behalf of her and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to incidents during her employment at Chester. I \_\_\_\_\_ further agrees that she, and not Released Parties, shall be responsible for satisfying any such liens, claims, demands, subrogated interests, or causes of action that may exist or have been asserted or that may in the future exist or be asserted. Further \_\_\_\_\_ agrees to waive any and all future actions against the Released Parties for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

6. Confidentiality. This Agreement and its terms and conditions are confidential to the extent allowed under law. Pursuant to NH RSA 91-A:4, VI and 507:17, this Agreement shall be placed on file with the Town clerk and shall be made available for public inspection for a period of ten (10) years. The Parties acknowledge and agree that this Agreement and its terms and conditions are otherwise confidential pursuant to N.H. RSA 5-B:7.

Notwithstanding the above paragraph, the parties and their counsel agree not to disclose or distribute any information concerning this Agreement, its terms and conditions, to any person or entity other than those persons who are essential to the consummation of the Agreement, or as may be required by law. Unless compelled to do so by a court of competent jurisdiction, I \_\_\_\_\_ may disclose such information only to legal counsel, her spouse, tax advisors, and/or the Internal Revenue Service, subject to their agreement to be bound by this confidentiality provision. The parties and/or their counsel otherwise agree that they shall make no disclosure or further comment whatsoever to the media or any person or entity regarding the terms of the settlement. The parties agree that, in response to any inquiry about this settlement or any allegations brought forth, the parties will state only as follows, "The matter has been resolved."

7. No re-employment. \_\_\_\_\_ waives any right to reinstatement. \_\_\_\_\_ acknowledges and agrees that if she applies for employment Chester has no duty to and may refuse to consider her for re-hire pursuant to this Agreement.

\_\_\_\_\_ will direct any employment inquiries be made to the Town Administrator and Chester will provide only the dates of employment and job title in response to any employment inquiries about!

8. 2005 Settlement Agreement. Upon execution of this Agreement, the 2005 Settlement Agreement between Chester and \_\_\_\_\_ will no longer be in effect. All rights and obligations as detailed in the 2005 Settlement Agreement are extinguished and the 2005 Settlement Agreement is null and void.

9. No Admission. The parties agree that any consideration given or paid with respect to this Agreement is in compromise of disputed claims and that the giving or payment of consideration in exchange for the general release of claims is not, and will not be construed as, an admission of liability or wrongdoing on the part of Chester or its employees, which deny any liability or wrongdoing as to each and every claim which has been or which may have been asserted against it.

10. Age Discrimination in Employment Act Acknowledgment. \_\_\_\_\_ knowingly, voluntarily, and specifically waives all rights under the federal Age Discrimination in Employment Act ("ADEA") as amended by the Older Workers Benefits Protection Act ("OWBPA") arising out of or in connection with her employment and/or separation from employment and the 2005 Settlement Agreement with the Town of Chester from the beginning of time to the date of her execution of this Agreement. The Parties acknowledge that this Agreement does not apply to any claim for events arising after the execution of this Agreement.

\_\_\_\_\_ acknowledges that she has read and understands this Agreement. \_\_\_\_\_ further acknowledges that this Agreement provides her with consideration beyond that to which she may otherwise be entitled. In addition, \_\_\_\_\_ acknowledges that this Agreement is not induced by any representation or promise made by any Party hereby released or their representatives other than the terms specifically recited in this document. This Agreement specifically advises, and \_\_\_\_\_ specifically acknowledges, that she was provided with an opportunity to review its content with an attorney prior to signing the Agreement.

\_\_\_\_\_ acknowledges that she has had up to twenty-one (21) days within which to consider this Agreement and that she has decided to accept the terms of this Agreement. The Parties agree that except for Paragraph 7 (Confidentiality), which shall become effective immediately, this Agreement will not become effective or enforceable until the expiration of a period of seven (7) days following the execution of the Agreement by \_\_\_\_\_ during which period she may revoke her consent to the Agreement by delivering a letter to the Town of Chester's legal counsel: K. Joshua Scott, Esquire, Jackson Lewis P.C., 100 International Drive, Suite 363, Portsmouth, New Hampshire,

03801, advising of her revocation, said letter to be delivered on or before midnight of the seventh day following her execution of this Agreement.

If the Agreement is not revoked during this seven (7) day period, this Agreement shall be irrevocable, and the business day following the expiration of the revocation period shall be deemed the Effective Date of the Agreement. It is further agreed and understood by \_\_\_\_\_ that in the event that she revokes the Agreement, Chester shall have no obligations hereunder.

11. Consultation with Counsel. In executing this Agreement, the parties acknowledge that they have been advised to consult with counsel, and that they have executed this Agreement knowingly, voluntarily and without undue influence or duress. The parties expressly consent to each and every term and provision of this Agreement.

12. Integration Clause; Amendment, Governing Law. This Agreement contains the complete, final, and exclusive embodiment of the entire understanding between the parties. This Agreement is entered into without reliance on any promise, representation, agreement or understanding, oral or written, between and among the parties relating to the subject matter of this Agreement, other than those expressly contained herein. No amendment of this Agreement shall be valid or effective unless made in writing and executed by the parties hereto subsequent to the execution of this Agreement. This Agreement shall be enforced in accordance with the laws of the State of New Hampshire, and the parties agree that any litigation to enforce the provisions of this Agreement will take place in New Hampshire. In the event of litigation regarding this Agreement, the parties expressly submit to the exclusive jurisdiction and venue of the federal and state courts located in New Hampshire.

13. Costs and Fees. Except as specifically set forth herein, the parties will bear their own costs, expenses, and attorneys' fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released herein.

14. Breach of Agreement. The parties acknowledge and agree that any party found to have breached this Agreement may be liable for the damages, reasonable attorneys' fees, and expenses resulting from any such breach, and also for equitable relief, as may be awarded by a court.

15. Construction. The parties acknowledge that they each had an equal opportunity to control the language in this Agreement, and that this Agreement was mutually drafted. The parties agree that in no event shall this Agreement be presumptively construed against any party.

16. Severability. If any portion of this Agreement is void or deemed unenforceable for any reason, the remaining portions shall survive and remain in effect, with any necessary modification to become a part hereof and treated as though contained in this original Agreement.

17. Countersignatures. This Agreement may be signed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same instrument.

**PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES  
A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

Date: 11/3/20





TOWN OF CHESTER,

Date:

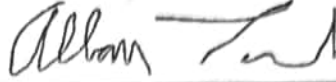
By:

A handwritten signature in black ink, appearing to be "J. L. ...", written over a horizontal line.

Title: Chairman Board of Selectmen

APPROVED AS TO FORM:

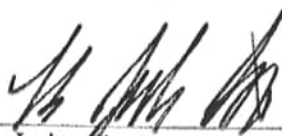
Date: 11/5/2020



\_\_\_\_\_  
Allan Townsend  
Maine Employee Rights Group  
Attorneys for

APPROVED AS TO FORM:

Date: 11/9/20



K. Joshua Scott  
Jackson Lewis P.C.  
Attorneys for Town of Chester

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